

United States
Circuit Court of Appeals

For the Ninth Circuit.

J. W. CHAPMAN and P. R. THOMPSON, Copartners,
Doing Business Under the Firm Name of CHAP-
MAN & THOMPSON,

Plaintiffs in Error,

vs.

JAVA PACIFIC LINE, a Corporation, STOOMVA-
ARTMAATSCHAPPY NEDERLAND, a Cor-
poration, ROTTERDAMSCH LLOYD, a Cor-
poration, JAVA-CHINA-JAPAN LYN, a Cor-
poration, BLACK COMPANY, a Corporation,
and WHITE COMPANY, a Corporation,

Defendants in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the
United States District Court of the
Northern District of California,
Second Division.

Filed

MAR 15 1917

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by *printing in italic* the two words between which the omission seems to occur.]

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*In the Superior Court of the State of California, in
and for the City and County of San Francisco.*

No. 72,276.

J. W. CHAPMAN and P. R. THOMPSON, Co-
partners Doing Business Under the Firm
Name of CHAPMAN & THOMPSON,
Plaintiffs,

vs.

JAVA PACIFIC LINE, a Corporation, STOOM-
VAARTMAATSCHAPPY NEDERLAND,
a Corporation, ROTTERDAMSCH E
LLOYD, a Corporation, JAVA-CHINA-
JAPAN LYN, a Corporation, BLACK COM-
PANY, a Corporation, and WHITE COM-
PANY, a Corporation,
Defendants.

Complaint.

Now come the plaintiffs above named and com-
plaining of the defendants above named for cause
of action allege:

I.

That said J. W. Chapman and P. R. Thompson
are, and at all times herein mentioned were, copart-
ners doing business under the firm name of Chap-
man & Thompson.

II.

Plaintiffs are informed and believe, and upon such
information and belief allege, that Java Pacific
Line, Stoomvaartmaatschappy Nederland, Rotter-
damsche Lloyd, Java-China-Japan Lyn, Black Com-

pany and White Company are, and at all times herein mentioned were, corporations organized and existing under and by virtue of the laws of the Kingdom of The Netherlands. That plaintiffs are ignorant of the names of defendants sued herein under the names Black Company and White Company, by which fictitious names the plaintiffs hereby designate said defendants. That at [1*] all times herein mentioned said defendants operated, and now operate, a line of steamers from San Francisco to Hong Kong and Manila; that said line of steamers is called and designated by defendants "Java Pacific Line."

III.

That J. D. Spreckels & Brothers Company, a corporation, are, and at all times herein mentioned were, the general agents of defendants at San Francisco, and are, and at all of said times were, the general agents of said "Java Pacific Line"; that said J. D. Spreckels & Brothers Company were at all times herein mentioned authorized by defendants, as such general agents, to make contracts with shippers and prospective shippers for the transportation of freight from San Francisco to Hong Kong or Manila, by said "Java Pacific Line."

IV.

That prior to the 27th day of January, 1916, plaintiffs requested defendants to reserve for plaintiffs space in the steamers of defendants sailing from San Francisco to Hong Kong and Manila during the

*Page-number appearing at foot of page of original certified Transcript of Record.

months of February, March, April, May and June, 1916. That on the 27th day of January, 1916, plaintiffs wrote and delivered to defendants a letter in the words and figures following, to wit:

“San Francisco, Jan. 27, 1916.

J. D. Spreckels & Bros. Co.,

Gen. Agts. Java Pacific Line,

60 California St., City.

Gentlemen:

Beg to acknowledge receipt of your letter of January 22d and confirming bookings for shipment from San Francisco during February, March and April and reservations for May and June. [2]

We have shown opposite the tonnage booked for each month the rates which are to apply and we would appreciate it if you would confirm the same.

February shipment, 1110 weight tons, rate \$8.00 per ton of 2000# for bar iron under 30 feet in length, plate iron and structural steel, no piece to exceed 4000# in weight, \$10.00 per ton of 2000# to Hong Kong and Manila.

March shipment, 1000 weight tons, rate \$10.00 per ton of 2000# for bar iron under 30 feet in length, plate iron and structural steel, no piece to exceed 4000# in weight, \$12.00 per ton of 2000# to Hong Kong and Manila.

April shipment, 1000 weight tons, rate \$25.00 per ton of 2000# for bar iron under 30 feet in length, plate iron and structural steel, no piece to exceed 4000# in weight, \$30.00 per ton of 2000# to Hong Kong and Manila.

May shipment, 1000 weight tons, rate to Hong Kong and Manila to be quoted about February 20th.

June shipment, 1000 weight tons, rate to Hong Kong and Manila, to be quoted about March 20th.

The above rates apply from ship's tackle, San Francisco, to ship's tackle, destination.

We would ask that you confirm above bookings, reservations and rates so *as complete* our records.

Very truly yours,
CHAPMAN & THOMPSON,
By J. W. CHAPMAN."

That on the 12th day of February, 1916, defendants replied to said letter of January 27th, 1916, as follows: [3]

"JAVA-PACIFIC LINE,
J. D. SPRECKELS & BROS. COMPANY,
General Agents.

San Francisco, Cal., Feb. 12, 1916.
Messrs. Chapman & Thompson,
Fife Bldg.,
San Francisco.

Gentlemen:

Referring to your letter of January 27th, detailing the space which you have booked or reserved with us for the next few months.

We confirm what you have written, except that in the month of March we have on our books reserved for you 300 tons weight for iron bars, plate iron, and structural steel.

We have noted against this item on our record, space to be increased if it is possible for us to accom-

modate any more of your freight on that steamer.

The freight rates mentioned in your letter are also hereby confirmed.

Yours very truly,

J. D. SPRECKELS & BROS. COMPANY.

FRED F. CONNOR,

Traffic Manager."

That said letter of February 12, 1916, was received by plaintiffs on or about the 13th day of February, 1916. That plaintiffs thereupon notified defendants that the reservation of 300 tons for the month of March was satisfactory and at the time of such notification requested defendants to use their best efforts to increase the space for the month of March.

V.

That thereafter and during the month of February, 1916, plaintiffs caused to be shipped on defendants' steamer which sailed [4] from San Francisco in the month of February, 1110 weight tons of bar iron under 30 feet in length and caused to be paid to defendants for the transportation thereof to Hong Kong and to Manila charges at the rate of \$8 per ton; that said freight was shipped and said charges paid under and in pursuance of said contract between plaintiffs and defendants evidenced by said letter of January 27, 1916, and February 12, 1916.

VI.

That on the 25th day of February, 1916, plaintiffs wrote to defendants a letter in the words and figures following, to wit:

“San Francisco, Feb. 25, 1916.

J. D. Spreckels Bros. Co.,

General Agts. Java Pacific Line,

San Francisco, California.

Gentlemen:

Referring to our letter of January 27th and yours of February 12th confirming booking for shipments from San Francisco during the months of February, March, and April. In accordance with the writer's arrangement with Mr. Edwards that we could book about 300 tons of measurement on this booking deducting it from the April booking, we have booked firm account of Studebaker Bros. Co. of California, 250 measurement tons of 40 cubic feet for shipment from San Francisco to Manila on S. S. “Karimoen” scheduled to sail April 22, 1916. Therefore, that we may obtain for you as per your request, letter from the shipper that is to forward the shipment, will you please send me by bearer, letter addressed to Studebaker Bros. Co. of California, reading as follows:

‘This confirms your contract for space engagement made with Messrs. Chapman & Thompson for account the S. S. “Karimoen” scheduled to sail about April 22, 1916.’ [5]

We wish to furnish you this letter this afternoon together with letters covering other space.

Yours very truly,

CHAPMAN & THOMPSON,

By P. R. THOMPSON.”

VII.

That on the 26th day of February, 1916, defendants repudiated the said contract between plaintiffs

and defendants evidenced by said letters of January 27, 1916, and February 12, 1916, and notified plaintiffs in writing that they would not further perform said contract. That said repudiation was contained in a letter written by defendants to plaintiffs which said letter was received by plaintiffs on the 26th day of February, 1916, and was and is in words and figures following, to wit:

“JAVA PACIFIC LINE,
J. D. SPRECKELS & BROS. COMPANY,
General Agents.
San Francisco, Cal., Feb. 26, 1916.
Messrs. Chapman & Thompson,
Fife Bldg.,
San Francisco.

Gentlemen:

Referring to your letter of February 25th, handed us yesterday afternoon by a Mr. Wheaton, which requests us to change a booking in your favor for the month of April.

In going over our record of the bookings for March and April, we find that the steamers have been over-booked, and we are therefore obliged to say we will be unable to accept any freight from you on our March and April steamers.

We wish also to advise you that for similar reasons [6] we have decided to cancel any reservations you have made on subsequent steamers.

Yours very truly,
J. D. SPRECKELS & BROS. COMPANY,
General Agents.
FRED F. CONNOR,
Traffic Manager.”

VIII.

That plaintiffs have been damaged by said breach of said contract by defendants; that plaintiffs have been damaged thereby in the sum of thirty-seven thousand dollars (\$37,000).

IX.

That on and prior to said 26th day of February, 1916, plaintiffs had offers from various persons to purchase from plaintiffs the right to ship to Hong Kong or Manila via the steamer of defendants sailing from San Francisco during the month of March, 1916, in pursuance of said contract between plaintiffs and defendants; that plaintiffs were and are able to sell the said space to which they were entitled under said contract on the steamer sailing during said month of March, to wit, 300 tons of space at the rate and price of fifty dollars (\$50) per ton of 2,000 pounds, said space to be used for the shipment of bar iron under 30 feet in length; that on said 26th day of February, 1916, the market or prevailing price for such space for such shipment was fifty dollars (\$50) per ton of 2,000 pounds. That if defendants had not breached said contract by repudiating the same, as aforesaid, plaintiffs would have been able to sell said 300 tons of space at said price and to make a profit on such sale of forty dollars (\$40) per ton, or a total profit on said 300 tons of twelve thousand dollars (\$12,000); that because of said breach of said contract by defendants, plaintiffs have lost the said profit which [7] they would have made on such sale of said space; that plaintiffs

have been damaged thereby in the said sum of twelve thousand dollars (\$12,000).

X.

That prior to the said 26th day of February, 1916, and subsequently to the 12th day of February, 1916, plaintiffs contracted with Shell Company of California, a corporation, to sell to said Shell Company of California 66 weight tons of space for April shipment of iron under 30 feet in length to Hong Kong and Manila, via the steamer of defendants sailing during said month; that said Shell Company of California agreed to pay plaintiffs therefor at the rate of fifty dollars (\$50) per ton; that by reason of said breach of defendants, plaintiffs will be unable to perform said contract with said Shell Company of California, and will lose the profit which they would have made thereon, to wit, the difference between twenty-five dollars (\$25) per ton and fifty dollars (\$50) per ton, or one thousand six hundred fifty dollars (1,650); that by reason of said breach, plaintiffs have been thereby damaged in said sum of one thousand six hundred fifty dollars (\$1,650).

XI.

That on and prior to said 26th day of February, 1916, plaintiffs had offers from various persons to purchase from plaintiffs the right to ship to Hong Kong or Manila via the steamer of defendants sailing from San Francisco during the month of April, 1916, in pursuance of the said contract between plaintiffs and defendants; that plaintiffs were and are able to sell the balance of the space to which they were entitled under said contract on the steamer sail-

ing during said month of April, to wit, 934 tons of space at the rate and price of fifty dollars (\$50) per [8] ton of 2,000 pounds, said space to be used for the shipment of bar iron under 30 feet in length; that on said 26th day of February, 1916, the market or prevailing price for such space for such shipment was fifty dollars (\$50) per ton of 2,000 pounds. That if defendants had not breached said contract by repudiating the same as aforesaid plaintiffs would have been able to sell said 934 tons of space at said price and to make a profit on such sale of twenty-five dollars (\$25) per ton, or a total profit on said 934 tons of twenty-three thousand three hundred fifty dollars (\$23,350); that because of said breach of said contract by defendants plaintiffs have lost the said profit which they would have made on such sale of said space; that plaintiffs have been damaged thereby in the said sum of twenty-three thousand three hundred fifty dollars (\$23,350).

XII.

That on the said 26th day of February, 1916, and at all times subsequent thereto prior to the time of the commencement of this action the prevailing or market rate for the transportation from San Francisco to Hong Kong or Manila by steamer sailing in the month of March, 1916, of 300 tons of bar iron under 30 feet in length was and is fifty dollars (\$50) per ton of 2,000 pounds; that in order to obtain on the said 26th day of February, 1916, or any time subsequent thereto prior to the time of the commencement of this action an agreement on the part of a carrier or carriers engaged in the transportation by

steamer of freight from San Francisco to Hong Kong or Manila to carry 300 tons of bar iron under 30 feet in length from San Francisco to Hong Kong or Manila during the month of March, 1916, plaintiffs would be compelled to agree to pay to such carrier or carriers charges at the rate of fifty dollars (\$50) per ton of 2,000 pounds. That on the said '[9] 26th day of February, 1916, and at all times subsequent thereto prior to the time of the commencement of this action the prevailing or market rate for the transportation from San Francisco to Hong Kong or Manila by steamer sailing in the month of April, 1916, of 1,000 tons of bar iron under 30 feet in length was and is fifty dollars (\$50) per ton of 2,000 pounds; that in order to obtain on the said 26th day of February, 1916, or any time subsequent thereto prior to the time of the commencement of this action an agreement on the part of a carrier or carriers engaged in the transportation by steamer of freight from San Francisco to Hong Kong or Manila to carry 1,000 tons of bar iron under 30 feet in length from San Francisco to Hong Kong, or Manila, during the month of April, 1916, plaintiffs would be compelled to agree to pay to such carrier or carriers charges at the rate of fifty dollars (\$50) per ton of 2,000 pounds.

WHEREFORE plaintiffs pray judgment against defendants for the sum of thirty-seven thousand dollars (\$37,000) and for their costs of suit.

ALFRED J. HARWOOD,

Attorney for Plaintiff.

State of California,

City and County of San Francisco,—ss.

J. W. Chapman, being first duly sworn, deposes and says: That he is one of the plaintiffs in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters herein stated on information or belief, and that as to those matters he believes it to be true.

J. W. CHAPMAN.

Subscribed and sworn to before me this 10th day of March, 1916.

[Seal]

J. R. CORNELL,

Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Mar. 10, 1916. H. I. Mulcrevy,
Clerk. By L. J. Welch, Deputy Clerk. Assigned
to Department No. Two (2), March 11, 1916. Geo.
H. Cabaniss, Presiding Judge. [10]

*In the Superior Court of the State of California in
and for the City and County of San Francisco.*

J. W. CHAPMAN and P. R. THOMPSON, Copart-
ners Doing Business Under the Firm Name of
CHAPMAN & THOMPSON,
Plaintiffs,

vs.

JAVA PACIFIC LINE, a Corporation, STOOM-
VAARTMAATSCHAPPY NEDERLAND, a
Corporation, ROTTERDAMSCH LLOYD,
a Corporation, JAVA-CHINA-JAPAN
LYN, a Corporation, BLACK COMPANY,
a Corporation, and WHITE COMPANY, a
Corporation,
Defendants.

Petition for Removal of Cause.

To the Honorable the Superior Court of the State of
California in and for the City and County of San
Francisco:

The Petition of Java Pacific Line, the Stoomvaart-
maatschappy Nederland, a Corporation, Rotter-
damsche Lloyd, a Corporation, Java-China-Japan
Lyn, a Corporation, Black Company, and White
Company, defendants in the above-entitled cause,
respectfully shows:

I.

That the said action is a suit of a civil nature at
common law, of which the District Court of the
United States has original jurisdiction. That the
said cause is now pending in this Honorable Court,
and has not been tried, nor have any of said defend-
ants appeared therein or been served with summons
or other process therein, nor has the time at or be-

fore which the defendants, these petitioners, are required by the laws of the State of California, or the rules of this Honorable Court to answer or plead to the complaint elapsed.

That the matter in controversy in this suit, exclusive of interest and costs, amounts to the sum of thirty-seven thousand (37,000) dollars, and exceeds the sum or value of three thousand [11] (3,000) dollars.

That the said suit is a controversy between the plaintiffs who at the time of the commencement of the said action were, and now are, citizens of the State of California, residing at San Francisco, and in the Northern District of California; and these defendants, petitioners herein, who at the time of the commencement of the said action were, and now are, citizens of a foreign State, nonresidents of the State of California, and subjects and citizens of the Kingdom of the Netherlands. That there are no other parties to this action.

II.

That by reason of the premises, these petitioners, the said defendants, desire and are entitled to have said suit removed from said Superior Court of the State of California, to the District Court of the United States for the proper district at this time.

III.

That the District Court of the United States in and for the Northern District of California, Division Two thereof, for the Ninth Circuit, holding terms at the city and county of San Francisco, State of California, is the District Court of the United States for the proper District being the United States District

Court held in the District where said suit is pending and where said plaintiffs reside.

IV.

Your petitioners herewith present a good and sufficient Bond, as provided by the statute in such causes, that they will within thirty days from the date of filing this petition file in the aforesaid District Court a certified copy of the record of this action and for the payment of all costs which may be awarded by said Court if the said United States District Court should hold that this suit was wrongfully or improperly removed thereto.

Your petitioners further pray that this Court proceed no [12] further herein except to make the Order of Removal as required by law and to accept the Bond herewith and direct a transcript of the record herein to be made for said Court as provided by law.

JAVA PACIFIC LINE.

STOOMVAARTMAATSCHAPPY NEDER-
LAND.

ROTTERDAMSCH LLOYD.

JAVA-CHINA-JAPAN LYN.

BLACK COMPANY.

WHITE COMPANY.

By J. D. SPRECKELS & BROS. CO.,

General Agents.

By W. D. K. GIBSON,

Secretary.

NATHAN H. FRANK,

IRVING H. FRANK,

Attorneys for Petitioners,

1215 Merchants Exchange Bldg.

*In the Superior Court of the State of California in
and for the City and County of San Francisco.*

No. —.

J. W. CHAPMAN and P. R. THOMPSON, Co-
partners Doing Business Under the Firm Name
of CHAPMAN & THOMPSON,
Plaintiffs,

vs.

JAVA PACIFIC LINE, a Corporation, STOOM-
VAARTMAATSCHAPPY NEDERLAND, a
Corporation, ROTTERDAMSCH LLOYD, a
Corporation, JAVA-CHINA-JAPAN LYN, a
Corporation, BLACK COMPANY, a Corpora-
tion, and WHITE COMPANY, a Corporation,
Defendants.

Order of Removal.

This cause coming on for hearing upon application of the defendants herein for an order removing the said cause to the United States District Court, Second Division, Ninth Circuit, and it appearing to the Court that the defendants have filed their petition for such removal in due form of law, and that the defendants have filed their bond duly conditioned, with good and sufficient surety, as required by law, and it appearing to the Court that this is a proper cause for removal to the United States District Court;

NOW, THEREFORE, IT IS HEREBY OR-
DERED AND ADJUDGED that this cause be, and

the same is, hereby removed to the United States District Court for the Northern District of California, Second Division, Ninth Circuit, and the clerk is hereby directed to make up the record in the said cause for transmission to said Court.

Done in open court this 23 day of March, 1916.

FRANK J. MURASKY,
Judge.

[Endorsed]: Filed Mar. 23, 1916. H. I. Mulcrevy,
Clerk. By H. Brunner, Deputy Clerk. [14]

*In the District Court of the United States in and for
the Northern District of California, Division
Two.*

No. 15,980.

J. W. CHAPMAN and J. R. THOMPSON, Co-
partners Doing Business Under the Firm Name
of CHAPMAN & THOMPSON,
Plaintiffs,

vs.

JAVA PACIFIC LINE, a Corporation, STOOM-
VAARTMAATSCHAPPY NEDERLAND, a
Corporation, ROTTERDAMSCH LLOYD, a
Corporation, JAVA-CHINA-JAPAN LYN, a
Corporation, BLACK COMPANY, a Corpora-
tion, and WHITE COMPANY, a Corporation,
Defendants.

Answer to Complaint.

Defendants in the above-entitled cause, answer
unto the complaint on file herein as follows:

I.

Answering unto Article IV in said complaint, these defendants deny that prior to the 27th day of January, 1916, or at any other time, or at all, plaintiffs requested defendants to reserve for plaintiffs, space in the steamers of defendants sailing from San Francisco to Hong Kong and Manila during the months of February, March, April, May and June, 1916, or to reserve for said plaintiffs space on any steamers whatsoever, or for any sailings whatsoever.

On the contrary, said defendants allege:

1. That on the 2d day of December, 1915, the said plaintiffs, then and there representing to said defendants that they were acting for and on behalf and on account of the Pacific Coast Steel Company, a corporation, booked with said defendants for account of said Pacific Coast Steel Company, space for 360 tons of [15] steel, destined to Hong Kong, to be shipped on the steamer "Arakan," scheduled to sail from San Francisco on or about February 19, 1916; and at the same time, and as part of the same transaction, secured an option for said Pacific Coast Steel Company to ship an aggregate of 750 tons destined to Hong Kong, Manila and Java ports of call, which said option was to expire one week from November 27, 1915. That thereafter, to wit, on the 3d day of December, 1915, said plaintiffs confirmed the booking of said 360 tons of steel bars for account of said Pacific Coast Steel Company, and also confirmed the said option for 750 tons of bar steel for account of said Pacific Coast Steel Company, and that thereafter, to wit, on the 28th day of January, 1916, the

said booking of 1110 tons of bar iron and steel to be shipped on said steamer "Arakan" to sail February 19, 1916, was duly confirmed by said Pacific Coast Steel Company.

That said 1110 tons of bar iron was thereafter, to wit, during the month of February, 1916, received on board of said steamer "Arakan" from said Pacific Coast Steel Company, and transported to Hong Kong and Manila in pursuance of said contract with said Pacific Coast Steel Company, and not otherwise, and said defendants deny that said cargo was shipped under or in pursuance of any other or different contract, or that said letters in said complaint set forth and dated January 27, 1916 and February 12, 1916, constituted the contract under which said or any freight was shipped.

2. That thereafter, on the 24th day of December, 1915, the said plaintiffs, then and there representing themselves to be acting as agents for and on account of the Pacific Coast Steel Company, booked with said defendants for account of said Pacific Coast Steel Company, 300 tons of bar steel, to be shipped on the steamer "Tjisondari," which said contract was thereafter confirmed [16] by said Pacific Coast Steel Company.

That thereafter, during the month of March, 1916, at the request of said Pacific Coast Steel Company, and in pursuance of and fulfillment of said contract last above mentioned, said defendants received on board said steamer from said Pacific Coast Steel Company, the said 300 tons of bar steel, and trans-

ported it as in said agreement of December 24th provided.

3. That on December 30, 1915, the said plaintiffs then and there representing themselves to be acting as agents for and on account of the Pacific Coast Steel Company, booked for account of said Pacific Coast Steel Company space for 1,000 tons of bar iron, for shipment from San Francisco to Hong Kong and Manila on the steamer "Karimoen," scheduled to sail April 22, 1916.

4. That on January 10, 1916, the said plaintiffs then and there representing themselves to be acting as agents and for and on account of the said Pacific Coast Steel Company, booked space for account of said Pacific Coast Steel Company for 1,000 tons of bar steel for shipment from San Francisco to Hong Kong or Manila on the steamer "Tjikembang," to sail about May 22, 1916.

5. That thereafter said J. W. Chapman requested the defendants to hand him a memorandum of the reservations so made by plaintiffs as aforesaid, with which request said defendants complied. That thereupon the said plaintiffs wrote the letter set forth in the complaint under date of January 27, 1916; that understanding said letter to be part and parcel of said transactions and correspondence preceding, and not otherwise, and were part and parcel of the said contracts, and not otherwise, and, they then and there were at all times understood to be part and parcel of said contracts between said defendants and the Pacific Coast Steel Company, and not otherwise.

6. That the said Pacific Coast Steel Company thereafter disaffirmed the said contract of December 30, 1915, for space for [17] 1000 tons of bar iron to be shipped on the steamer "Karimoen" during the month of April, 1916, and also disaffirmed the said contract of January 10, 1916, for 1000 tons of bar steel for shipment on the steamer "Tjikembang," to sail about May 22, 1916, and then and there informed said defendants that the said plaintiffs were not authorized to enter into the said contracts for or on account of said Pacific Coast Steel Company, and notwithstanding that the said defendants were able, ready and willing to receive the cargo of the said Pacific Coast Steel Company on board of said vessel and to transport it in accordance with the terms of said contracts, the said Pacific Coast Steel Company declined to ship any cargo thereunder.

7. Said defendants further allege that at the time the said letter set forth in Article VI on pages 5 and 6 of said complaint, and dated February 25, 1916, was presented to said defendants, the said defendants declined to comply with the request therein contained. Said defendants further allege that following the letters set forth in said complaint in Article VII, pages 6 and 7 thereof, and dated February 26, 1916, the said defendants addressed a second letter to said plaintiffs, which was in words and figures following:

“San Francisco, Feb. 29, 1916.

Messrs. Chapman & Thompson,

Fife Bldg.,

San Francisco.

Gentlemen:

Referring to our letter of Feb. 26th regarding space reservations on our Java-Pacific Line Steamers:

When you applied to us on Nov. 27th, 1915, for space, you claimed to represent the Pacific Coast Steel Co., and we booked various quantities of steel for their account upon your requests. Each of your written requests state thereon that such space or options were for account of the Pacific Coast Steel Co.

Your claim that the contract for space is for your account is not well founded, and your attempt to sell the same is a fraud upon us. That is our real reason for cancelling your reservations, and we only assigned the reasons mentioned in our letter of Feb. 26th because we desired to close the matter with as little friction as possible. Since you have placed the matter in the hands of your lawyer, it becomes proper and necessary that the real issue between [18] us shall be properly stated.

We therefore now advise you that all further dealings by us in the matter shall be with your principal, the Pacific Coast Steel Co., direct.

Yours very truly,

J. D. SPRECKELS & BROS. COMPANY,

General Agents.

C-470-E.

C.,

Traffic Manager.”

II.

These defendants deny that they have committed any breach of any contract between them and the said plaintiffs, or between them and the said Pacific Coast Steel Co., the principals of said plaintiffs, and they further deny that said plaintiffs, by reason of any matter or thing done, or omitted to have been done by them, have been damaged in the sum of thirty-seven thousand (37,000) dollars, or in any sum of money whatsoever, or at all.

III.

Answering unto Article IX in said complaint, except the allegation beginning on line 29 of page 7 to line 3, page 8, as follows to wit: "That because of said breach of said contract by defendants plaintiffs have lost the said profit which they would have made on such sale of said space; that plaintiffs have been damaged thereby in the said sum of twelve thousand dollars (12,000)," these defendants have no information or belief upon the subject sufficient to enable them to answer the same, wherefore, on that ground, they deny, generally and specifically, all and singular, each and every of said allegations in said article contained.

Said defendants deny that they committed any breach whatsoever of said contract; and they further deny that said plaintiffs have lost any profits that they would have made on such sale of said space, and deny that they would have made any profits upon said sale; and further deny that they had any right whatsoever to sell said, or any, space whatsoever on board of any steamers [19] belonging to the said

defendants; and further deny that by reason of any matter or thing done, or omitted to have been done by the defendants in the premises, plaintiffs have suffered damage in the sum of twelve thousand (12,000) dollars, or in any sum of money whatsoever, or at all. Said defendants further allege that the said 300 tons of cargo was received on board from the said Pacific Coast Steel Co. during the month of March, 1916, and transported in the manner in said contract provided, as hereinbefore alleged.

IV.

Answering unto Article X of said complaint, and particularly unto the allegation "That prior to the said 26th day of February, 1916, and subsequently to the 12th day of February, 1916, plaintiffs contracted with Shell Company of California, a corporation, to sell to said Shell Company of California 66 weight tons of space for April shipment of iron under 30 feet in length to Hong Kong and Manila, via the steamer of defendants sailing during said month; that said Shell Company of California agreed to pay plaintiffs therefor at the rate of fifty dollars (\$50) per ton," these defendants have no information or belief upon the subject sufficient to enable them to answer the same, wherefore, on that ground, they deny generally and specifically, all and singular, each and every above-mentioned allegations.

Said defendants deny that by reason of said alleged breach of defendants, or by reason of any breach whatsoever on the part of said defendants,

plaintiffs will be unable to perform said, or any, contract with said Shell Company of California, or that said plaintiffs will lose the profits which they would have made, to wit, the difference between twenty-five dollars (\$25) per ton and fifty dollars (\$50) per ton, or one thousand six hundred and fifty dollars (\$1650); and they further deny that said defendants committed any breach of any contract with said plaintiffs, or that by reason of any matter or thing done, or omitted to have been done [20] by said defendants in the premises, or otherwise, or at all, the plaintiffs will lose any profits whatsoever, or that the said plaintiffs have been damaged in the sum of one thousand six hundred and fifty dollars (\$1650), or in any sum of money whatsoever, or at all.

V.

Answering unto Article XI in said complaint, and particularly unto the allegation therein, "that on and prior to said 26th day of February, 1916, plaintiffs had offers from various persons to purchase from plaintiffs the right to ship to Hong Kong and Manila via the steamer of defendants sailing from San Francisco during the month of April, 1916, in pursuance of the said contract between plaintiffs and defendants; that plaintiffs were and are able to sell the balance of the space to which they were entitled under said contract on the steamer sailing during said month of April, to wit, 934 tons of space at the rate and price of fifty dollars (\$50) per ton of 2,000 pounds, said space to be used for the shipment of bar iron under 30 feet in length; that on said 26th day of February, 1916, the market or prevailing price for such space

for such shipment was fifty dollars (\$50) per ton of 2,000 pounds," these defendants have no information or belief upon the subject sufficient to enable them to answer the same, wherefore, on that ground, they deny generally and specifically, all and singular, each and every of the said allegations hereinbefore set forth.

Further answering unto said article, these defendants deny that they have committed any breach of any contract with said plaintiffs, or any contract with any parties with which said plaintiffs were connected; and they further deny that said plaintiffs would have been able to sell any of said space at said, or any, price, or to make any profit whatsoever out of said space; and they further deny that because of said alleged breach of said contract [21] by defendants, or because of any matter or thing whatsoever done or omitted to have been done by said defendants in the premises, said plaintiffs have lost any profits whatsoever, or that they have been damaged in the sum of twenty-three thousand three hundred and fifty dollars (\$23,350), or in any sum of money whatsoever, or at all.

VI.

Answering unto Article XII of said complaint, these defendants have no information or belief upon the subject sufficient to enable them to answer the same, wherefore, on that ground, they deny generally and specifically, all and singular, each and every the allegations in said article contained.

WHEREFORE, defendants pray that said complaint may be dismissed, and for their costs herein.

NATHAN H. FRANK,

IRVING H. FRANK,

Attorneys for Defendants.

JAVA PACIFIC LINE.

STOOMVAARTMAATSCHAPPY NEDER-
LAND.

ROTTERDAMSCHE LLOYD.

JAVA-CHINA-JAPAN LYN.

BLACK COMPANY.

WHITE COMPANY.

By J. D. SPRECKELS & BROS. CO.,

W. D. K. GIBSON,

Secretary. [22]

State of California,

City and County of San Francisco,—ss.

W. D. K. Gibson, being first duly sworn, deposes and says: That he is the secretary of J. D. Spreckels & Bros. Co., a corporation, and that the said company are the general agents of the defendants in the above-entitled action; that he has read the foregoing Answer to Complaint, and knows the contents thereof; that the same is true, except as to the matters which are therein stated upon information and belief, and that as to those matters he believes it to be true.

W. D. K. GIBSON,

Subscribed and sworn to before me this 18th day of May, 1916.

[Notarial Seal]

JAMES MASON,

Notary Public in and for said City and County of San Francisco, State of California.

Receipt of a copy of the within Answer to Complaint is hereby admitted this 18th day of May, 1916.

ALFRED J. HARWOOD,

Attorney for Plaintiffs.

[Endorsed]: Filed May 18, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [23]

In the District Court of the United States, in and for the Northern District of California, Division Two.

No. 15,980.

J. W. CHAPMAN and J. R. THOMPSON, Copartners Doing Business Under the Firm Name of
CHAPMAN & THOMPSON,
Plaintiffs,

vs.

JAVA PACIFIC LINE, a Corporation, et al.,
Defendants.

Demurrer to Answer.

Now comes the plaintiffs and demur to that part of the answer contained in the paragraphs of subdivision I numbered from 1 to 7, both inclusive, on the ground that the matters therein referred to do not constitute a defense to said action.

Plaintiffs demur specially to the part of the 5th paragraph of said subdivision I of said answer, commencing with the words "that understanding said letter" upon the ground that said part of said paragraph is unintelligible.

ALFRED J. HARWOOD,
Attorney for Plaintiffs.

Receipt of a copy of the within demurrer to answer is hereby admitted this 29th day of May, 1916.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Defendants.

[Endorsed]: Filed May 31, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [24]

At a stated term, to wit, the March term, A. D. 1916,
of the District Court of the United States of
America, in and for the Northern District of
California, Second Division, held at the court-
room in the city and county of San Francisco,
on Monday the 26th day of June in the year of
our Lord one thousand nine hundred and six-
teen. PRESENT: The Honorable WILLIAM
C. VAN FLEET, District Judge.

No. 15,980.

J. W. CHAPMAN et al., etc.,

vs.

JAVA PACIFIC LINE et al.

Order Overruling Demurrer to Answer.

After hearing had, it was ordered that plaintiffs'

demurrer to answer be overruled and motion to strike out parts of answer be denied. [25]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 15,980.

J. W. CHAPMAN and P. R. THOMPSON, Co-partners Doing Business Under the Firm Name of CHAPMAN & THOMPSON,
Plaintiffs,

vs.

JAVA PACIFIC LINE, a Corporation, STOOM-
VAARTMAATSCHAPPY NEDERLAND,
a Corporation, ROTTERDAMSCH E
LLOYD, a Corporation, JAVA-CHINA-
JAPAN LYN, a Corporation,
Defendants.

Verdict.

We, the jury, find in favor of the defendants.

F. C. HANDY,
Foreman.

[Endorsed]: Filed Sept. 26, 1916. Walter B. Maling, Clerk. [26]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 15,980.

J. W. CHAPMAN and P. R. THOMPSON, Co-
partners Doing Business Under the Firm
Name of CHAPMAN & THOMPSON,
Plaintiffs,

vs.

JAVA PACIFIC LINE, a Corporation, STOOM-
VAARTMAATSCHAPPY NEDERLAND,
a Corporation, ROTTERDAMSCH E
LLOYD, a Corporation, JAVA-CHINA-
JAPAN LYN, a Corporation, BLACK
COMPANY, a Corporation, and WHITE
COMPANY, a Corporation,

Defendants.

Judgment on Verdict.

This cause having come on regularly for trial upon the 22d day of September, 1916, being a day in the July, 1916, term of said court, before the Court and a jury of twelve men duly impaneled and sworn to try the issue joined herein; A. J. Harwood, and Eustace J. Cullinan, Esqrs., appearing as attorneys for plaintiffs and Nathan H. Frank and Irving H. Frank, Esqrs., appearing as attorneys for defendants; and the trial having been proceeded with on the 26th day of September, in said year and term, and oral and documentary evidence upon behalf of

the respective parties having been introduced and closed and the cause, after arguments by the attorneys, having been submitted to the Court upon a request by defendants for an instructed verdict in their favor, and the Court having directed the jury to return a verdict accordingly, and the jury having rendered the following verdict, which was ordered recorded namely: "We, the jury, find in favor of the defendants, F. C. Handy, Foreman," and the Court having ordered that judgment be entered in accordance with said verdict and for costs:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that plaintiffs [27] take nothing by this action and that defendants go hereof without day, and that said defendants do have and recover of and from said plaintiffs their costs herein expended taxed at \$229.45.

Judgment entered September 26, 1916.

WALTER B. MALING,

Clerk. [28]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,980.

J. W. CHAPMAN and P. R. THOMPSON, Co-
partners Doing Business Under the Firm
Name of CHAPMAN & THOMPSON,
Plaintiffs,

vs.

JAVA PACIFIC LINE, a Corporation, STOOM-
VAARTMAATSCHAPPY NEDERLAND,
a Corporation, ROTTERDAMS CHE-
LLOYD, a Corporation, JAVA-CHINA-
JAPAN LYN, a Corporation, BLACK COM-
PANY, a Corporation, and WHITE COM-
PANY, a Corporation,
Defendants.

Engrossed Bill of Exceptions.

BE IT REMEMBERED that the above-entitled action came duly on for trial on the 22d day of September, 1916, before the above-entitled Court and a jury, and was tried on said 22d day of September, 1916, and on the 26th day of September, 1916, Messrs. Alfred J. Harwood and Eustace Cullinan, appearing as attorneys for the plaintiffs, and Nathan H. Frank, Esq., and Irving H. Frank, Esq., appearing as attorneys for the defendants, whereupon the following proceedings were had and the

following evidence adduced on behalf of the respective parties.

A jury was duly empaneled to try the said action.

Plaintiffs thereupon offered and there was received and read in evidence a letter dated January 27, 1916, from the plaintiffs to the defendants, which said letter was marked Plaintiffs' Exhibit No. 1, and is in words and figures following, to wit:

Plaintiffs' Exhibit No. 1—Letter, Dated San Francisco, January 27, 1916, Chapman & Thompson to J. D. Spreckels & Bros. Co.

“San Francisco, Jan. 27, 1916.

J. D. Spreckels & Bros. Co.,

Gen. Agts. Java Pacific Line,

60 California St., City.

Gentlemen:

Beg to acknowledge receipt of your letter of January 22nd confirming bookings for shipment from San Francisco during February, March and April and reservations for May and June. [29]

We have shown opposite the tonnage booked for each month the rates which are to apply and we would appreciate it if you would confirm the same.

February shipment, 1110 weight tons, rate \$8.00 per ton of 2000# for bar iron under 30 feet in length, plate iron and structural steel, no piece to exceed 4000# in weight, \$10.00 per ton of 2000# to Hong Kong and Manila.

March shipment, 1000 weight tons, rate \$10.00 per ton of 2000# for bar iron under 30 feet in length, plate iron and structural steel, no piece to

exceed 4000# in weight, \$12.00 per ton of 2000# to Hong Kong and Manila.

April shipment, 1000 weight tons, rate \$25.00 per ton of 2000# for bar iron under 30 feet in length, plate iron and structural steel, no piece to exceed 4000# in weight, \$30.00 per ton of 2000# to Hong Kong and Manila.

May shipment, 1000 weight tons, rate to Hong Kong and Manila to be quoted about February 20th.

June shipment, 1000 weight tons, rate to Hong Kong and Manila to be quoted about March 20th.

The above rates apply from ship's tackle, San Francisco, to ship's tackle, destination.

We would ask that you confirm above bookings, reservations and rates so *as complete* our records.

Yours very truly,

CHAPMAN & THOMPSON.

By J. W. CHAPMAN."

Plaintiffs offered and there was thereupon received and read in evidence a letter dated February 12, 1916, from the defendants to the plaintiffs, which said letter was marked Plaintiffs' Exhibit No. 2 and was in words and figures following, to wit:

Plaintiffs' Exhibit No. 2—Letter, Dated February 12, 1916, from J. D. Spreckels & Bros. Co., to Chapman & Thompson.

“JAVA-PACIFIC LINE

J. D. Spreckels & Bros. Company

General Agents.

Messrs. Chapman & Thompson,

Fife Bldg.,

San Francisco.

Gentlemen:

Referring to your letter of January 27th, detailing the space which you have booked or reserved with us for the next few months.

We confirm what you have written, except that in the month of March we have on our books reserved for you 300 tons weight for iron bars, plate iron and structural steel.

We have noted against this item on our record, space to be increased if it is possible for us to accommodate any more of your freight on that steamer.

The freight rates mentioned in your letter are also hereby confirmed.

Yours very truly,

J. D. SPRECKELS & BROS. COMPANY.

FRED F. CONNOR,

Traffic Manager.”

Plaintiffs offered and there was thereupon received and read in evidence a letter dated February

26, 1916, from defendants [30] to plaintiffs which said letter was marked Plaintiffs' Exhibit No. 3, and was in words and figures following, to wit:

Plaintiffs' Exhibit No. 3—Letter, Dated San Francisco, February 26, 1916, J. D. Spreckels & Bros. Co., to Chapman & Thompson.

“JAVA-PACIFIC LINE

J. D. Spreckels & Bros. Company

General Agents.

San Francisco, Cal. Feb. 26, 1916.

Messrs. Chapman & Thompson,

Fife Building,

San Francisco.

Gentlemen:

Referring to your letter of February 25th, handed us yesterday afternoon by a Mr. Wheaton, which requests us to change a booking in your favor for the month of April.

In going over our record of the bookings for March and April, we find that the steamers have been overbooked, and we are therefore obliged to say we will be unable to accept any freight from you on our March and April steamers.

We wish also to advise you that for similar reasons we have decided to cancel any reservations you have made on subsequent steamers.

Yours very truly,

J. D. SPRECKELS & BROS. COMPANY, General Agents.

FRED F. CONNOR,
Traffic Manager.”

Testimony of J. W. Chapman, for Plaintiffs.

J. W. CHAPMAN, one of the plaintiffs, was thereupon called and sworn as a witness on behalf of plaintiffs and testified as follows:

(In answer to Mr. HARWOOD:)

Q. Mr. Chapman, you are one of the plaintiffs in this case, are you? A. Yes, sir.

Q. Mr. Chapman, what experience have you had in the matter of ocean transportation from San Francisco to Hong Kong and Manila and other Oriental points, and what experience have you had in the matter of freight rates during the last two years, we will say, from San Francisco to Hong Kong and Manila?

A. I have been connected with transportation in San Francisco since 1907. I have for several years, from 1907 to 1910—

The COURT.—You mean ocean transportation?

A. Yes, both ocean and rail. From 1907 to 1910 I was traffic manager for the Pacific Hardware & Steel Company; my duties there made it necessary for me to keep in touch with ocean rates and rail rates, [31] as we were doing business to the Orient, and also various other ports. From 1910 to 1912 I was secretary and traffic manager for the California-Atlantic Steamship Company, which operated a line of steamers from San Francisco to the Isthmus of Panama, where we transhipped cargo by various connections to New York, New Orleans and to European ports, and while we did not operate any steamers ourselves to the Orient, I was in touch with

(Testimony of J. W. Chapman.)

conditions in a general way. During the past year and a half or two years, I have been engaged in brokerage business, representing a number of firms in San Francisco handling their transportation matters for them; among the firms that I have represented is Guggenhime & Co., handling dried fruits—packers and shippers of dried fruits, doing export business to the Orient, as well as to practically all other countries of the world, all other civilized countries. I represented the Pacific Coast Steel Company, who do an export business to the Orient. I have done some special work for the Export Leaf Tobacco Company of New York—Mr. C. C. Dimon, of New York, who is interested in the Export Leaf Tobacco Company, in a steamer they purchased and loaded for the Orient. It has been necessary for me to keep in touch with all of the steamship lines that were loading to and from Oriental ports as well as other ports.

Q. Are you still representing Guggenhime & Co.?

A. Yes, sir.

Q. Do they ship to the Orient? A. They do.

Q. Have they shipped to the Orient at all times during the last year and a half?

A. Yes, they have business with the Orient regularly.

Q. Are you familiar with different lines of steamers that sail from San Francisco to Hong Kong and Manila, or other Oriental points? A. I am.

Q. Are you acquainted generally with the agents

(Testimony of J. W. Chapman.)

or representatives of those steamers in San Francisco? A. Yes, sir.

Q. With all of them?

A. Yes, I think with all of them. [32]

Q. Are you familiar with all the different steamers that have sailed from San Francisco to Manila and Hong Kong, or other Oriental points, during the last year and a half?

A. Well, I was at the time; I may not be able to name them all at this date.

Q. Were you familiar with them at the time they sailed? A. Yes, sir.

Q. And generally with what cargo they carried and generally with what rates they charged?

A. With the rates they charged, yes, the rates that they quoted.

Q. Mr. Chapman, what, in your opinion, was the market or prevailing rate on the 26th of February, 1916, for the transportation by steamer from San Francisco to Hong Kong or Manila of bar iron under 30 feet in length for shipment during the month of March, 1916?

Mr. FRANK.—If your Honor please, we wish to object to that question on the ground that it is incompetent and immaterial; it is not the true measure of the damages, if any damages are to be recovered in this case. Here is the plaintiff with a contract for the carriage of certain merchandise, and the recovery that he can make, if any, would be the difference between the contract price for the carriage and what he could have shipped the goods for on

(Testimony of J. W. Chapman.)

board some other vessel at the same time, and for the same voyage. It is not a contract like a contract for the purchase of goods, where he is to resell the goods and therefore cannot claim the difference between the contract price for the goods and the market value of the goods; he is bound to obtain the right to ship by some other vessel and ship it; the difference between the two rates would be his damages.

The COURT.—Well, that is true—I mean, assuming that to be true, does not this bear upon the question of what those rates would have been, requiring him to ship by other carriers?

Mr. FRANK.—Well, it may be that he could get a rate according to what he estimates is the market value, or it may be that he could get a better rate.
[33]

The COURT.—I doubt, though, if under such circumstances one would be so limited. While the rule that you invoke is correct, I think in this effect that one could not sit back under a contract of this kind upon its alleged breach and fail to take reasonable steps to try and save himself from loss; that is due not only to himself but it is due to his adversary, I am not prepared to say that the rule would be limited to an inquiry into special efforts that he made; I think that the prevailing rates at the time would be pertinent and relevant upon the question of what damage he did suffer by the breach if it is shown to exist.

Mr. FRANK.—We simply desire to make the point and save our exception.

(Testimony of J. W. Chapman.)

The COURT.—The objection is overruled. I think the question is objectionable, however; it is not a question of opinion, it is a question of fact. If he did not know, he cannot testify to it; if he did know, he can testify to it.

Mr. HARWOOD.—I will withdraw the question.

Q. Do you know, Mr. Chapman, what the prevailing rate was for shipment in the month of March, that is, on February 26, 1916, for transportation by steamer from San Francisco to Hong Kong or Manila; do you know what the prevailing rate was on the 26th of February, for bar iron?

A. Yes, sir.

Q. What was that rate? A. \$40 to \$50 a ton.

The COURT.—That is a very decided difference. Don't you know what the rate was?

A. The rates to the Orient at that time varied; some steamers were taking freight at a lower figure than others, and space was very hard to secure. There was considerable more tonnage offering for shipment than there were ships to carry it. I am basing that statement on rates that were quoted, and on contracts that I had secured for freight charges, iron and steel, from San Francisco to Hong Kong.

Mr. HARWOOD.—Q. Mr. Chapman, do you know what the market [34] or prevailing rate was on the 26th of February, 1916, for the transportation by steamer from San Francisco to Hong Kong and Manila of bar iron under 30 feet in length, for shipment during the month of April, 1916? Do you know? Answer "Yes" or "No."

(Testimony of J. W. Chapman.)

A. Yes, sir.

Q. What was that rate?

A. The rate was from \$40 to \$50 a ton.

Q. Will you please state in detail upon what you base your opinion or statement that the rate was from \$40 to \$50 per ton—upon what you base your testimony that the rate was from \$40 to \$50 per ton?

A. From investigations I had made. About that time I had granted options to parties who desired to ship to various ports on the basis of \$40 a ton. I had been quoted rates at \$40 per ton at that time.

Q. Please continue, Mr. Chapman, and answer the question. Read the question, Mr. Reporter.

(The question was here read by the reporter.)

A. Because space could not be obtained at that time at a lower figure.

Mr. HARWOOD.—That is all.

Cross-examination.

(In answer to Mr. FRANK.)

Mr. FRANK.—Q. I understood you to say, Mr. Chapman, that you were traffic manager for quite a number of firms.

A. I handled their transportation matters for them; yes, sir.

The COURT.—He said as a broker.

A. (Continuing.) And also doing a brokerage business.

Mr. FRANK.—He said distinctly that he was traffic manager for them. He also does a brokerage business.

(Testimony of J. W. Chapman.)

The COURT.—Yes.

Mr. FRANK.—Q. And among the parties for whom you were traffic manager was the Pacific Coast Steel Company? A. Yes, sir.

Q. That is a business entirely apart from the brokerage business, as I understand it?

A. The business of the Pacific Coast Steel Company was handled— [35]

The COURT.—He means the managing of the traffic.

Mr. FRANK.—Q. Traffic manager of a particular concern is a matter apart from your general brokerage business? A. Yes, sir.

Q. By traffic manager for a particular concern, you mean you attend to the shipments for that particular concern, get their space and their rates, and things of that sort?

A. Attend to contracting for space.

Q. For the concern? A. Yes, sir.

Q. Of course, the experience that you have spoken of and have related here in shipping, the bulk of it was what we call coastwise and European, and not trans-Pacific, was it not?

A. No, sir. I have always been in touch with trans-Pacific business, and have represented firms that handled business to the Orient.

Q. In 1907 to 1910 you were with whom?

A. I was with the Pacific Hardware & Steel Company.

Q. And they were shipping to what ports?

A. They were shipping between San Francisco and

(Testimony of J. W. Chapman.)

New York, between San Francisco and Australia, New Zealand, between San Francisco and the Hawaiian Islands, San Francisco and Japan and China, and also to Alaska.

Q. At any rate, the rates prevailing at that time had nothing to do with the rates prevailing at the time here in question. It ended about six years before this transaction took place—is that right?

A. That is right; the rates were different at that time.

Q. From 1910 up to—I don't remember the time, but you will fill in the date for me—

The COURT.—To 1912, I think he said.

Mr. FRANK.—Q. (Continuing.) You were with the California Atlantic Steamship Company?

A. Yes, sir.

Q. Engaged entirely between San Francisco and New York?

A. San Francisco and the Atlantic Seaboard points, and European points.

Q. You had no trans-Pacific business?

A. No trans-Pacific business. [36]

Q. Was it in 1912 you represented them?

A. It was in the early months of 1913. I might add, Mr. Frank, that we did handle Oriental business at Panama in connection with the Toyo Kisen Kaisha.

Q. That is, you received from the Toyo Kisen Kaisha cargo that you transported from San Francisco to Panama?

(Testimony of J. W. Chapman.)

A. Yes; we had through billings arrangements with them.

Q. Of course, you had nothing to do with fixing the rates from Japan to San Francisco?

A. No. The rates were made by the originating carrier.

Q. And since that time you have been in this brokerage business, building it up?

A. All but about a year and a half; I have been in the brokerage business for between the last year and a half and two years.

Q. Previous to that you were simply acting as traffic manager for some institution?

A. Yes, and doing some special work, special transportation work?

Q. For whom?

A. For the firm of White & Company, of New York.

Q. When you speak of special work, do you mean in connection with the transportation of cargo?

A. In Marine transportation.

Q. Then we will eliminate that entirely from this particular line of experience; is that right?

A. Yes, sir.

Q. So, after all, when we come down to it, it has been about a year and a half that you have been engaged in brokerage business and as traffic manager for these different companies; is that right?

A. Yes, sir.

Q. Now, Mr. Chapman, you have testified to what you consider the prevailing rates for the month of

(Testimony of J. W. Chapman.)

March, that is, the prevailing rates for shipment during the month of March. I will reframe that question. The prevailing rates on February 26 for shipment in the month of March—to what particular lines did you make application on February 26th, to ascertain what the rates were?

A. During [37] that time—

Q. (Intg.) During what time? Confine yourself to February 26th.

Mr. HARWOOD.—You don't mean the exact day, do you, Mr. Frank?

Mr. FRANK.—That is the date you fix and that is the date he testified to.

A. I conferred, about February 26th—I would not say it was on that very day—with W. R. Grace & Company.

Q. Just one moment. With W. R. Grace & Company you conferred. Go on.

A. About that time they expected to have a steamer sailing not in March, but a little later, and they advised me that their rate would be, if they put the steamer on, \$40.

Q. Now, before we go to the next one, we will finish with W. R. Grace & Company; you say you conferred with W. R. Grace & Company?

A. I talked with them, yes, at their office.

Q. With whom did you talk? A. Mr. Mann.

Q. What is his position with W. R. Grace & Company?

A. At that time he was assistant to the traffic manager, and looked after the bookings and reservations

(Testimony of J. W. Chapman.)

for space on the various steamers, and the quoting of rates.

Q. At that time, did you have any cargo that you proposed to ship by W. R. Grace & Company?

A. I could not say that I actually had cargo at that time. Our business was to obtain the rates and solicit cargo wherever we could secure it, and to book on the rates the space that we were able to secure.

Q. When you say, "Conferred," do you mean to say you were negotiating with him for a shipment at that time?

A. I was obtaining information of that kind. I would go to the office of the steamship company and ascertain if they had any steamers on the berth, or contemplated putting any steamers on the berth, about what the position would be, and what rates they would quote, and get down to talking quantities; sometimes we would talk 50 tons, or it might be 200 tons, or 250 tons.

Q. In that conversation did you ask him for his rate on bar steel? [38]

A. Yes, and at that time, I will add that they were making the same rate on all commodities, on a weight or measurement basis, ship's option.

Q. That is, he told you he was making the same rate on all commodities?

A. I will add to that with the exception of such special commodities as high explosives, and a few exceptions of that kind.

Q. I am asking you did he tell you that?

(Testimony of J. W. Chapman.)

A. Yes, that their rates were on a weight or measurement basis.

Q. Did you mention to him that you had some bar iron or plate to tranship?

A. Yes, and I asked him the rate on bar iron and structural steel.

Q. And I understood you to say that they had no ships for March or April sailings?

A. They were considering announcing a steamer at that time and her position would not be for March, as I originally stated.

Q. And it was not for April, either, was it?

A. They did not know just what her position would be, but they finally did announce a steamer sometime later, and she sailed, as I recall now, in May. There was a great demand for steamer space—

Q. Let us not digress, Mr. Chapman, I want to confine ourselves to the subject in question.

A. But in order to make myself clear it is sometimes necessary to make a little further explanation than your question might call for.

Q. You will always have the opportunity afterwards, you will be given ample opportunity, and if I don't bring it out your counsel will.

Q. What other carrier did you confer with on February 26th, or thereabouts, to ascertain the rate?

A. I was in touch with the firm of Swayne & Hoyt.

Q. What particular gentleman connected with Swayne & Hoyt were you conferring with?

A. I talked at that time or about that time to

(Testimony of J. W. Chapman.)

Mr. Brown, the traffic manager—to Mr. Carlson, who was a representative. [39]

Q. Was not Mr. Moran in control at that time?

A. Mr. Moran was manager of Swayne & Hoyt's at that time; Mr. Brown was the traffic manager, and attended to the making of the freight rates and the booking of cargo, and contracting for the space, Mr. Brown being under Mr. Moran.

Q. So that, as a matter of fact, Mr. Moran was the man who fixed these rates.

A. Well, I would not say as to that.

Q. Did you speak to Mr. Moran about it at all?

A. No, sir, I talked to Mr. Brown.

Q. What vessel did Swayne & Hoyt have at that time?

A. I would like to make this further statement in reply to your last question, Mr. Frank, that I have talked to Mr. Brown, that I did talk to Mr. Moran at different times on the question of rate and space, but he would always turn it over to Mr. Brown.

Q. What vessel did Swayne & Hoyt have at that time for either March or April shipments?

A. I have not these dates firmly fixed in my mind; they loaded the "Yucatan."

Q. Do you know whom she was loaded for and whom she was in berth for? You know as a general matter that the "Yucatan" was a vessel they employed in their trade? A. Yes.

Q. What I want to know is, was the "Yucatan" up at that time, either for a March or April sailing from San Francisco to the Orient?

(Testimony of J. W. Chapman.)

A. She was up about that time; I cannot say that it was at that exact date.

Q. Which date are you referring to now—February 26th? A. Yes, sir.

Q. She was up for what date of shipment?

A. The "Yucatan," as I recall it, sailed in March for Oriental points.

Q. What time in March?

A. I do not recall the day; it is my recollection she sailed in March.

Q. What rate did they quote you?

A. They didn't quote me a rate, because she was booked full.

Q. Did you ask them what their rates were?

A. Yes, I discussed [40] rates with them from time to time.

Q. What did they tell you that the rates were?

A. They expected at that time, if they had any space, they could fill it all at \$40 or better.

Q. Now, Mr. Chapman, you were present when the deposition of Mr. Moran was taken in this matter, were you not? A. Yes, sir.

Q. You remember that at that time he testified that the rates were \$35.

A. Yes, he made the statement that they were handled by Mr. Brown, and that Mr. Brown was more familiar with them than he was, but that his recollection was that the rates were around \$35, that that is what they actually collected.

Q. Now, are you sure he made the statement that they were handled by Mr. Brown, and that Mr.

(Testimony of J. W. Chapman.)

Brown was more familiar with them than he was?

A. Words to that effect.

Q. Now, I will ask you to refresh your memory upon the subject. Did he not testify as follows:

“Q. Now, Mr. Moran, what, in your opinion, was the market or prevailing rate on February 26, 1916, for the transportation by steamer from San Francisco to Hong Kong or Manila on bar iron under 30 feet in length for shipment during the month of March, 1916.”

Mr. FRANK.—And I will read the answer:

“A. Well, to an extent it would depend upon the quantity and the steamer which would be carrying it. If I could explain that I will give you my reasons.

Q. Yes, go ahead.

A. If engagements were made in which you had considerable measurement cargo and you were anxious to sail, why you would probably be inclined to quote a lower rate; on the other hand, if you had a considerable dead weight and were bidding for measurement, why you might be inclined to get a much higher rate if you possibly could. The prevailing rates to Japan, to Kobe and Shanghai, were in the neighborhood of \$35.” Is not that what he testified to? [41]

A. Yes, that was his testimony there, but the question you asked me was whether or not he had stated that Mr. Brown handled the traffic and was more familiar with it than he was, as I recall your question, and not as to the price that he had testified to.

(Testimony of J. W. Chapman.)

Q. Now, that is all of the vessels that Swayne & Hoyt had that in all probability would be sailing in March or April, is it not? A. At that time.

Q. Was there anybody else with whom you conferred or negotiated in this matter?

A. No, not right around that date, but later in March.

Q. Later in March. How late in March?

A. Around the 10th of the month, the 10th of March, I had other conversations.

Q. About March 10th? A. Yes, sir.

Q. With whom did you confer at that time?

A. Mr. C. L. Dimon, of New York.

Q. Mr. C. L. Dimon, of New York?

A. Yes; he is one of the purchasers of the steamer along with the Export Leaf Tobacco Company.

Q. Mr. Dimon was not running a line from San Francisco to the Orient, was he?

A. I would be very glad to explain my conversation with Mr. Dimon.

Q. Let me get the answer first.

A. Mr. Dimon was not running a line at that time to the Orient; he was figuring on putting this steamer on the berth for the Orient to handle the measurement cargo of the Export Leaf Tobacco Company, and he was interested in obtaining a certain quantity of dead-weight cargo, consisting of certain quantities of iron and steel, so as to load the vessel to her maximum capacity.

Q. Did he not, as a matter of fact, apply to you as a broker to act in that capacity and fill his vessel?

(Testimony of J. W. Chapman.)

A. I have known Mr. Dimon a number of years—

Q. Answer the question.

A. No; Mr. Dimon first called on me.

Q. Just answer that question “Yes” or “No,” and let us not get into [42] any discussion.

A. Not at that time.

Q. Not at that time?

A. No, sir, he did not.

Q. Then at that time, on March 10th, when you say you had a conversation with him, was he calling upon you for any business purpose whatsoever, or was it a mere social call?

A. It was for a business purpose, to obtain information as to the prevailing freight market to the Orient.

Q. That is, he wanted to obtain information from you? A. Yes, sir.

Q. He was not quoting any rates, and he did not have any vessel on, and he never put a vessel on; isn't that right?

A. He did put a vessel on.

Q. Not on that route?

A. To the Orient, yes, sir.

Q. When? A. Sailing in April.

Q. What vessel was it?

A. The steamer “Justin.”

Q. That was a collier, wasn't it?

A. The old Government collier “Justin,” yes, sir.

Q. Did she sail in April?

A. Yes; my recollection is she sailed in April.

Q. What date? A. I have not the exact date.

(Testimony of J. W. Chapman.)

Q. Was it the first, or last, or what part of April?

A. Sometime during April she cleared; I don't recall the exact date now.

Q. Did you handle that vessel for him?

A. No, sir.

Q. Now, as I understand it, he had a cargo of leaf tobacco, and he wanted to fill in some extra space; is that it?

A. He had a shipment of tobacco and tobacco products, and he wanted some heavy cargo.

Q. How much space did he have left?

A. He was in the market for 1500 tons of iron and steel and other heavy commodities.

Q. Did you tell him at that time that you had 1500 tons of iron and steel to be shipped and ask him if he would carry those for you?

A. I advised Mr. Dimon that in my opinion he could secure iron and steel for Shanghai and other Oriental ports at a rate of at least [43] \$40 per ton, and that he would have no trouble.

Mr. FRANK.—Q. That is, you advised him that he could obtain some iron and steel at the rate of \$40 a ton; you did not ask him if he would carry your iron and steel, or what rate he would charge, did you? A. No, sir.

Q. You never attempted to bargain with him at all to carry your iron and steel? A. No, sir.

The COURT.—Q. Well, you were not a shipper at any time, were you?

A. No, sir.

Q. You merely acted as a manager for the purpose

(Testimony of J. W. Chapman.)

of securing space? A. Yes, or as a broker.

Q. As a broker? A. Yes, sir.

Mr. FRANK.—Q. I understand that at this time you were traffic manager for the Pacific Coast Steel Company, and that you had, as you claim here, made a contract for the carrying of 300 tons in March and 1000 tons of steel in April. That is right, isn't it. A. Not for the Pacific Coast Steel Company.

Q. I am not saying who you contracted for; that is the dispute in this case between us. At any rate, you were at that time traffic manager of the Pacific Coast Steel Company and at that time you had what you claimed to have been a contract for the transportation of the steel that I have mentioned, and which contract you allege had been broken before the time of this conversation? A. Yes, sir.

Q. Now, Mr. Chapman, who else, if anybody, did you apply to with respect to the matter we now have under discussion for March or April shipments?

A. I was in constant touch with the Toyo Kisen Kaisha and they continually informed that their steamers were booked full and they could not take any additional cargo, especially dead weight cargo such as iron and steel, they had more of that class of business than was desirable.

Q. Do you know what their rate was?

A. Of course, you understand [44] there was no space obtainable on their ships.

The COURT.—Mr. Chapman, don't suggest things that are not in response to the question. He asked you if they gave you their rates. You can answer

(Testimony of J. W. Chapman.)

whether they did, or not?

A. Yes, sir, they gave me their rates; they varied on different trips—from \$15,—I remember one ship they had at \$16. Another one \$18. On their regular ships which were subsidized by the Japanese government their rates were considerably lower than even \$16 or \$18.

Mr. FRANK.—Q. They were \$12 for bar steel, weren't they?

A. In that neighborhood; I would not say that that was the exact figure, but that is very close to it.

Q. And they were carrying bar steel during that time whenever they had space at those rates?

A. Yes, they were carrying considerable tonnage.

Q. Was there anybody else that you applied to?

A. No, at that time that is about all the ships that were available.

Q. So then that is the foundation of whatever knowledge you have upon the subject of the prevailing rates, is it not?

A. Yes. I was in touch with the whole situation of the people who were in the trade.

Redirect Examination.

(In answer to Mr. HARWOOD.)

Q. Mr. Chapman, you stated that at the time you interviewed the Toyo Kisen Kaisha people that they had no space available for iron and steel; is that correct? A. Yes, sir.

Q. At what time did you interview them?

A. I was in touch with and called on the T. K. K.

(Testimony of J. W. Chapman.)

people during February and in March at least five times a week. They were continuously negotiating with their home office for additional steamers which did not materialize at that time.

Q. You have given some testimony regarding the freight rates; you testified regarding certain rates, from \$12 to \$16 and \$18 for [45] iron and steel on the T. K. K. Do I understand you to say that freight, if any was moved at that price, that that was at a rate fixed long prior to that time?

A. Yes; I might also add that the rates of the Toyo Kisen Kaisha are controlled by the Japanese government and—

Q. Do you know when the \$12 to \$18 rate on the T. K. K. was fixed?

A. No, I could not say when it was fixed.

Q. Was the T. K. K. in the month of February booking any iron and steel for March and April shipments?

A. I was unable to secure any space from them for iron and steel.

Q. Mr. Chapman, did you at this particular time confer with anyone connected with G. W. McNear & Company?

A. I could not give the date. I did sometimes confer—in fact, Mr. Jewell of G. W. McNear & Company connected with the steamship end of their business, called on me soliciting cargo for the steamer “Nan Smith” which they had placed on the berth for April loading for the Orient.

(Testimony of J. W. Chapman.)

Q. What ports in the Orient?

A. Manila and one of the Japanese ports.

Recross-examination.

(In answer to Mr. FRANK.)

Q. Now, Mr. Chapman, you say that these rates of the "Toyo Kisen Kaisha" were fixed previous to February; is that the way I understood you on your redirect?

A. I said I do not know when they were fixed.

Q. (The COURT.) You said fixed some time before; how did you learn that? Your counsel asked you if they were not fixed some time before and you said yes; that is what counsel is asking you about now.

Mr. FRANK.—Q. Don't you know as a matter of fact, they were fixed to be effective on and after February 1, 1916?

A. I don't know the dates when they were fixed.

Q. Are you acquainted with their tariff schedule as published? A. I have no copy of it, no, sir.

[46]

Q. You have seen a copy of it; you would recognize it if you saw it, would you not?

A. I have seen it at their office; I never had a copy in my own office.

Q. You would not undertake to say now that those rates were not fixed for on and after February 1, 1916?

A. No, sir; I do not know the date when they were fixed.

Testimony of R. E. Avery, for Plaintiffs.

R. E. AVERY, a witness on behalf of plaintiffs, was thereupon duly sworn and testified as follows:

(In answer to Mr. HARWOOD.)

Q. What is your occupation?

A. I am with the Shell Company as ocean traffic manager.

Q. That is the Dutch Shell Company?

A. The Royal Dutch Shell; it is one of their subsidiaries.

Q. What business are they in? A. Oil.

Q. How long have you been with them?

A. About three years.

Q. At what places?

A. Martinez and San Francisco.

Q. How long have you had charge of their foreign shipments? A. Since about the 1st of this year.

Q. Where do they ship to?

A. From San Francisco?

Q. Yes.

A. To Japan, China, and the Dutch East Indies.

Q. And to Hong Kong? A. Yes, sir.

Q. To Manila? A. Not to Manila.

Q. What do they ship?

A. Principally iron and steel and nails and wax or petroleum products.

Q. Do they ship them for their own use?

A. Yes, sir.

Q. All are shipped for their own use?

A. Yes, sir.

Q. Are you familiar with the freight rates on iron,

(Testimony of R. E. Avery.)

steel and other similar articles during the first part of this year from San Francisco to Hong Kong, Manila and other Oriental points.

A. I made several inquiries.

Q. Do you consider yourself familiar with the prevailing rates [47] for such shipments in those months,—say in the month of February?

A. I think so.

Q. What was the prevailing rate for shipments from San Francisco to Hong Kong or Manila of bar iron under 30 feet in length for shipment during the month of March, 1916, that is, the prevailing rate on the 26th of February, 1916, for such shipments?

Q. You understand the question, Mr. Avery; what was the prevailing rate on February 26, 1916, for the shipment of bar iron or steel under 30 feet in length, for shipment from San Francisco to Hong Kong or Manila, for shipment during the month of March, 1916? A. Between \$40 and \$50 a ton.

Q. Now, the same question with reference to April shipments; what is your answer?

A. Mine was with reference to April shipments; I had nothing for March shipments.

Q. The first question was, what was the prevailing rate for March shipments?

The COURT.—And then you added February before you got through, February and March.

Mr. HARWOOD.—The question was, what was the prevailing rates on February 26th for March sailing? Your answer was given on the understanding that the question related to April shipments.

(Testimony of R. E. Avery.)

A. Yes, sir.

Cross-examination.

(In answer to Mr. FRANK.)

Q. Mr. Avery, as I understand it, you have only shipped foreign since the 1st of this year?

A. That is correct.

Q. That is rather indefinite. Can you fix the date more definitely than that?

A. About the first half of January.

Q. The first half of January? A. Yes, sir.

Q. That was the beginning of your experience?

A. Yes, sir.

Q. And in that occupation your principal shipments are oil, are they not?

A. Not at that time, no, sir; they were hardware.

Q. What kind of hardware?

A. Iron and steel and nails. [48]

Q. When you say iron and steel do you mean bar iron 30 feet in length? Did you have any plate steel?

A. It was angle iron principally. Angle iron and barbed wire.

Q. Angle iron and barbed wire? A. Yes, sir.

Q. No plate steel? A. No, sir.

Q. And no bar iron? A. No, sir.

Mr. HARWOOD.—Unless angle iron is bar iron; I think it is.

The COURT.—It is not classed as bar iron in the trade; it is distinct, angle iron, bar iron, plate steel.

Mr. HARWOOD.—Q. What is the shape of angle iron? A. Triangular.

(Testimony of R. E. Avery.)

Q. How long is it?

A. This that I have reference to was I believe 40 feet in length.

Mr. FRANK.—Q. Now, of this particular class of steel that you are talking about, how many shipments did you have? A. One.

Q. And how many tons was in it?

A. The whole shipment amounted to about 71 tons.

Q. And that is all? A. Yes, sir.

Q. By what conveyance did you ship it?

A. Steamer.

Q. What steamer?

A. It finally went on the Java Pacific Line.

Q. In April?

A. I think it was held over until May.

Q. It was May? A. Yes, sir.

Q. Did you procure the shipment directly from the Java Pacific or did you use some broker?

A. I first applied to Chapman and Thompson.

Q. When was that?

A. That was on the 24th of February. I had previously communicated with the Java Pacific but had not yet at that date received any answer from them.

Q. Well, at any rate, it was not an April shipment, it was a May shipment?

A. On February 26th, I fully expected it to be an April shipment.

Q. But it was not?

A. It was held over by the suppliers. [49]

Q. At any rate, it did not go on the April shipment and it was not booked for the April shipment at all?

(Testimony of R. E. Avery.)

A. No, sir.

Q. And when it was booked it was booked for the May shipment?

A. When it was finally booked it was booked for the April shipment and it was transferred.

Q. When it was finally booked the rate was fixed and when the rate was fixed it was for the May shipment?

A. No, sir, the rate was fixed when it was booked for the April shipment, and then I had it transferred to the May shipment.

Q. Who did you have that transaction with?

A. The Java Pacific people.

Q. What individual? A. Mr. Connor, I believe.

Q. You don't know whether or not the Java Pacific at that time was carrying other cargo for \$25 a ton, do you? A. No, sir.

Q. Now, as a matter of fact, Mr. Avery, was not that rate fixed by Messrs. Chapman & Thompson instead of by the Java Pacific?

A. The original rate that I had with them was.

Q. That is, the rate for the April shipment?

A. Yes, sir.

Q. And you had no agreement of that sort at all with the Java Pacific Company?

A. Nothing foreign, no.

Q. And you don't know whether or not that was a Java-Pacific rate or a Chapman & Thompson rate to you with some other contract between them and the Java Pacific? A. That I do not know.

(Testimony of R. E. Avery.)

Q. Then, as I understand you now, when it finally was accepted it was for a May shipment and not for an April shipment? A. Yes.

Redirect Examination.

(In answer to Mr. HARWOOD.)

Q. You booked this freight first through Chapman & Thompson on the 24th of February; is that correct? A. Yes, sir.

Q. Was your booking with them in writing?

A. Yes, sir.

Q. I will ask you if this letter and the answer is the written evidence of that booking?

A. It is. [50]

Q. Mr. Avery, I believe you testified that at the time you were about to make this shipment you tried the Java Pacific line by writing them a letter; what was the date of that letter?

A. I think about the 15th of February.

Q. Had you received any answer to that letter at the time you entered into an agreement with Chapman & Thompson? A. No, sir.

Q. The date of your agreement with Chapman & Thompson was the 24th of February, was it?

A. Yes, sir.

Q. Before you made the agreement with Chapman & Thompson, did you try the T. K. K.—The Toyo Kisen Kaisha?

A. I tried them for about January, for this shipment and others, but was unable to get any space.

Q. The rate of \$50, which you contracted for with

(Testimony of R. E. Avery.)

Chapman & Thompson, was that the best rate you could get for the April shipment?

A. That was the best rate I could get up to the middle of March.

Mr. FRANK.—Q. I understood you thought that there was no April shipment?

A. It eventually went to the month of May.

Testimony of W. S. Wheaton, for Plaintiffs.

W. S. WHEATON, a witness on behalf of plaintiffs was thereupon duly sworn and testified as follows:

(In answer to Mr. HARWOOD.)

Q. Mr. Wheaton, what is your occupation?

A. I work for the Oriental Pacific, for Swayne & Hoyt.

Q. How long have you been engaged in the steamship business?

A. A little over a year in the steamship business.

Q. What business were you in before that?

A. Railroad business.

Q. Where do they operate?

A. Operate to the Orient.

Q. Are you familiar with freight rates from San Francisco to Hong Kong and Manila and other Oriental points? A. Yes, sir.

Q. And you were in February, 1916?

A. Yes, sir.

Q. What was the prevailing rate on the 26th of February, 1916, for [51] the shipment from San Francisco to Hong Kong, Manila, of bar iron under

(Testimony of W. S. Wheaton.)

30 feet in length, for shipment during the month of March?

A. Forty to \$50 was the prevailing rate, as I quoted it; never under forty.

Q. Now, the same question with reference to an April shipment?

A. The same rates, never under forty.

Cross-examination.

(In answer to Mr. FRANK.)

Q. Were you operating at that time under Mr. Moran?

A. I reported to Mr. Brown, not to Mr. Moran.

The COURT.—Q. He asked you whether you were operating under Mr. Moran?

A. Does he mean the ships or personally?

Q. You personally? A. No, sir.

Q. You were employed by that firm?

A. Yes, sir.

Mr. FRANK.—Q. And Mr. Moran was your superior? A. He was the operating manager.

Q. And I suppose that what you wish us to understand is that you reported to Mr. Brown?

A. Yes, sir.

Q. And Mr. Brown to Mr. Moran?

A. That is the story, I presume.

Q. And the only vessel you had was the "Yucatan"?

A. No, we had the "Alvarado." We were booking freight for the "Alvarado" at that time.

Q. When was she on the berth?

(Testimony of W. S. Wheaton.)

A. She went out in June, according to my recollection.

The COURT.—Q. They are talking about an earlier time than that?

A. But we were booking freight at that time.

Q. For June shipment?

A. For June shipment.

Mr. FRANK.—Q. Is that the shipment that you are basing your figures on? A. No, sir.

Q. Outside of the “Yucatan” that was all you had? A. Yes, sir.

Q. You heard what Mr. Chapman said this morning as to the time that the “Yucatan” was in the berth?

A. No, I don't know that I heard [52] it all; I was a little late in getting here this morning.

Q. She sailed in March? A. Yes, sir.

Q. Were you financially interested with Mr. Chapman in the proposition of disposing of this particular freight space? A. I was.

Q. In other words, there was a split between you and Mr. Chapman in any profits you could make on the sale of this particular freight space?

A. Yes, sir.

Q. And all that you had to do with the matter of selling or handling freight outside of this particular transaction between you and Mr. Chapman was to secure freight for the “Yucatan”?

A. That is all.

Q. And that was for March? A. Yes, sir.

Q. That is all your experience, is it?

(Testimony of W. S. Wheaton.)

A. That is all my experience.

Redirect Examination.

(In answer to Mr. HARWOOD.)

Q. When did the "Yucatan" sail? Are you certain about the date of her sailing?

A. From memory I would say the latter half of March, as I recall it.

Q. Where did the "Yucatan" go to?

A. Shanghai and Kobe; I should say Kobe and Yokohama.

Q. Any other place?

A. No, I think it was Kobe-Yokohama, if my memory serves me correctly.

Testimony of Charles E. Brown, for Plaintiffs.

CHARLES E. BROWN, a witness on behalf of plaintiffs was thereupon duly sworn and testified as follows:

(In answer to Mr. HARWOOD.)

Q. What is your occupation?

A. Traffic manager, Swayne & Hoyt.

Q. How long have you been traffic manager?

A. Since April 1, 1915.

Q. Last year? A. Last year.

Q. What were your duties as traffic manager?

A. The handling of general traffic matters pertaining to the making of rates and the booking of cargoes on vessels of the Oriental Pacific Line, the Arrow Line and the Panama-Pacific Line, all of which Swayne & Hoyt [53] were the agents for.

Q. They were agents for all those lines?

(Testimony of Charles E. Brown.)

A. Yes, sir.

Q. Had you had any experience with steamship matters prior to going with Swayne & Hoyt?

A. Prior to going with Swayne & Hoyt, I was assistant to Mr. Miller, Traffic Manager for Baker & Hamilton and the Pacific, Portland Cement Company, for four and a half years; I was looking after the ocean business of Baker & Hamilton and the Pacific, Portland Cement Company. Prior to that I was with the Alaska Pacific Company as freight agent.

Q. How long were you with that company?

A. Approximately two years.

Q. Was this experience all in San Francisco?

A. All in San Francisco.

Q. Have you had any experience outside of your experience in San Francisco, anything in any other place? A. No, sir.

Q. Are you familiar with the rates on iron and steel and other commodities from San Francisco to Hong Kong and Manila, that is, the prevailing rate on March and April shipments, on the 26th of February, 1916?

A. Familiar to this extent, that as traffic manager for Swayne & Hoyt and looking after our own interests, I was naturally in touch with what was going on with our competitors in other directions, and it was only natural I should come in contact with the business to Hong Kong and Manila, as we contemplated at one time; in fact, we did send a small vessel to Manila ourselves; from my general knowl-

(Testimony of Charles E. Brown.)

edge of the situation I would say that the rates were for March and April shipment, in the latter part of February, in the neighborhood of \$40, from thirty-five to \$40, possibly some people paid more than \$40; as a matter of fact, the rate was what you could get; I don't believe anything was booked under \$35.

Testimony of W. L. Carlson, for Plaintiffs.

W. L. CARLSON, a witness on behalf of plaintiffs was thereupon duly sworn and testified as follows: [54]

(In answer to Mr. HARWOOD.)

Q. What is your occupation?

A. Contracting freight agent for Swayne & Hoyt.

Q. How long have you been with Swayne & Hoyt?

A. One year.

Q. What was your occupation before that time?

A. I worked for the Pacific Mail Steamship Company, in the freight department.

Q. For how long? A. Four and a half years.

Q. In what capacity?

A. Signing bills of lading; freight clerk in the freight department.

Q. What were your duties with Swayne & Hoyt?

A. Soliciting freight.

Q. Where to?

A. To the Orient,—Japan and China.

Q. Are you familiar with the prevailing rate on bar iron and steel for shipment from San Francisco to Hong Kong and Manila, for March and April shipments; that is, the prevailing rate on the 26th of February, 1916? A. Yes, sir.

(Testimony of W. L. Carlson.)

Q. What was that rate? A. \$40.

Q. Per ton? A. Per ton.

Cross-examination.

(In answer to Mr. FRANK.)

Q. You heard the statement of Mr. Brown that it was as low as \$35 at that time. Is that a fact?

A. Some of it, yes, sir.

Q. In other words, it was what you could get, as he stated? A. Yes, sir.

Q. If you had a vessel you would make your bargain in the best you could with your customers?

A. Most of the rates quoted were \$40 around that time.

Q. You have not answered my question; read the question, Mr. Reporter.

(Question repeated by the reporter.)

A. Yes, sir.

Q. And they varied not only between lines but they varied also with reference to the quantity shipped, didn't they? A. No; any quantity.

Q. And they varied also with respect to the nature of the cargo, [55] didn't they?

A. No. That \$40 rate applied to most everything.

Q. That is your opinion. Did you have the making of the contracts for the "Yucatan"?

A. I went out and got the freight, solicited business.

Q. Then you had to do with the March sailing?

A. Yes, sir.

Q. You had no ships on in April?

(Testimony of W. L. Carlson.)

A. We had nothing in April.

Q. Did you ship all the cargo on the "Yucatan," at \$40? A. Thirty-five and \$40.

Q. Thirty-five and \$40? A. Yes, sir.

Q. So there was a difference, wasn't there?

A. Yes, sir.

The COURT.—Q. I thought you said it all went at \$40?

A. I said the different kinds of commodities made no difference; we quoted \$40.

Q. Suppose I had wanted to ship 1,000 tons and somebody else was shipping 2,000 tons, wouldn't that make a difference in the rate you would give?

A. Yes and no.

Q. I don't care anything about yes and no; I want to know what the fact is; the jury want to know what the facts are?

A. Well, our rates were between \$35 and \$40.

Q. And you said it made no difference as to quantity and very little as to the character of the freight?

A. As a rule, no, but we took what we could get; as Mr. Frank said, we bargained with the shippers.

Q. Then it was not a uniform rate of \$40?

A. \$35 and \$40.

Redirect Examination.

(In answer to Mr. HARWOOD.)

Q. Freight went on that ship at a higher rate than \$40, did it not? A. On what ship?

Q. The "Yucatan"?

A. Yes, there was some stuff higher than \$40.

(Testimony of W. L. Carlson.)

Q. What was the average that was received for all freight on that ship?

Mr. FRANK.—We object to the average of it.
[56]

The COURT.—The objection is sustained. We are talking about a particular class of freight here.

Mr. HARWOOD.—I think the cross-examination went to all classes of freight.

The COURT.—Only because this witness stated it made no difference as to the character of freight or as to the quantity, that the prevailing rate was \$40; he has modified it since. They had a right to cross him in that respect.

Mr. HARWOOD.—Q. Mr. Carlson, at what time were the shipments booked for the “Yucatan”? They commenced booking before the 26th of February, did they not? A. From December on.

Q. Your statement with reference to the rate of \$35, does that statement refer to the bookings as late as the 26th of February?

A. No, on the 26th of February, I am quite positive that everything was booked at \$40 on that date.

Q. The rates were higher then than when you started? A. Yes, sir.

Recross-examination.

(In answer to Mr. FRANK.)

Q. Did you book anything at all in February, for the “Yucatan”? A. Yes, sir.

Q. What did you book and who did you book for?

A. Swayne & Hoyt.

Q. No, I mean who was the shipper?

(Testimony of W. L. Carlson.)

A. There were various shippers.

Q. Do you remember any of them?

A. H. M. Newhall & Company, I think.

Q. What did they ship? A. Steel.

Q. How much? A. About 100 tons.

Q. What weight?

A. I don't remember offhand.

Q. Anybody else?

A. Are you referring particularly to steel or to anything?

Q. You made the general statement; you can make it general if you want to. Of course, I shall come down to steel particularly?

A. I don't remember offhand any other shippers of steel. [57]

The COURT.—Q. Then do you know anything about what rates were received for bookings as late as February 26th? A. Yes, sir.

Q. From whom?

A. I booked some cargo myself at \$40 on another line.

Q. We are talking about this line, this ship that you have been testifying to?

A. Do I understand you to say that we booked some cargo as late as February 26th?

Q. No, I am asking you if you did, and at what rate?

A. I don't remember the exact date of the bookings, but we booked cargo in February at those rates.

Q. You said a few moments ago that on the 26th of February freights were higher than they had been

(Testimony of W. L. Carlson.)

at a previous time; what do you gather that statement from? A. Lack of tonnage.

Q. You have stated to Mr. Harwood that rates in December were lower than they were subsequently, in February? A. Yes.

Q. You are not able to state that you made any bookings as late as February? A. Yes, we did.

Q. From whom?

A. I cannot recall all the shippers. I named H. M. Newhall & Company.

Q. But you don't remember what rate they paid?

A. I do not, offhand.

Q. Then how do you know it was as low as \$35? I want the facts to go before the jury so that they will have some intelligent conception of what the rates were?

A. I was naming a shipper offhand. I could find out some shippers that booked as late as February and paid \$40.

Q. Did Newhall & Company pay \$40?

A. I don't remember whether they paid \$35 or \$40.

Q. But you booked them as late as February?

A. Yes, sir. [58]

PLAINTIFFS THEREUPON RESTED.

Mr. FRANK.—The first letter that I propose to offer in evidence is the letter addressed to Messrs. Chapman & Thompson by the J. D. Spreckels & Bros. Company, General Agents, under date of December 2d, 1915.

Mr. HARWOOD.—The admission of the letter in evidence is objected to upon the ground that it is

wholly immaterial, irrelevant and incompetent, a prior negotiation or transaction, and attempting to vary by parol or extrinsic evidence two letters forming the contract between the parties.

Mr. FRANK.—I think your Honor is advised of the situation in this case. This is one of a series of letters that passed between these parties, which culminated in the two letters that were introduced in evidence here. Our position is that this is part of the contract. This series of letters shows who the parties were for whom this contract was made. I will show you the other letter.

The COURT.—(To Plaintiff's Counsel.) The contract you rely upon is one by correspondence, is it not?

Mr. CULLINAN.—If the Court please, we contend that the contract is complete in itself, consisting of two letters, and that all prior letters and oral negotiations are merged in it.

The COURT.—That is a question of construction. The objection is overruled.

To the said ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 1.

Said letter was marked Defendant's Exhibit "A," and was and is in words and figures following, to wit:

Defendant's Exhibit "A"—Letter, Dated San Francisco, December 2, 1915, from J. D. Spreckels & Bros. Co. to Messrs. Chapman and Thompson.

JAVA-PACIFIC LINE.

San Francisco, Cal., Dec. 2, 1915.

Messrs. Chapman & Thompson,

100 California St.

San Francisco.

Gentlemen:

Referring to interview with Mr. Chapman on Nov. 27th: [59]

We understand that you have booked firm 360 tons STEEL from the Pacific Coast Steel Co., destined Hongkong, on our SS. "Arakan" scheduled to sail from San Francisco on or about February 19th, 1916.

Also, that we gave you option to ship an aggregate of 750 tons, destined Hongkong, Manila and Java ports of call. This option to expire one week from Nov. 27th.

In order that we may be sure there is no misunderstanding, will you kindly confirm and also advise by December 4th, concerning the option, which expires that date.

Yours very truly,

J. D. SPRECKELS & BROS. CO.

C-8-E.

F. F. C.,

General Agents.

Mr. FRANK.—Now, I offer in evidence the letter written by J. W. Chapman to the J. D. Spreckels & Bros. Company, General Agents Java-Pacific line, under date of December 3, 1915.

Mr. HARWOOD.—This letter is objected to upon the ground that it is immaterial irrelevant and incompetent and an attempt to vary by parol or extrinsic evidence a contract complete on its face formed by the two letters set forth in the complaint.

The COURT.—If you will stop, gentlemen, just for a moment to think, you are proceeding upon a purported contract made by correspondence. Now, all correspondence which relates to the subject matter, must be taken into consideration by the Court in determining what that contract is.

Mr. CULLINAN.—Of course, whether or not the last two letters constitute a contract is a matter of construction for the Court.

The COURT.—Yes, but you cannot tell until you see all the correspondence bearing on the subject. It is not like verbal negotiations antedating a written contract. You must have the whole subject matter before the Court before it can say what the contract was because the previous letters may bear very strongly upon the interpretation to be put upon the subsequent letters.

Mr. CULLINAN.—But there are two particular letters on which we rely and in themselves, within their four corners, are a complete contract; they do not refer to any prior correspondence.

The COURT.—It does not make any difference whether they refer [60] to it expressly, or not; I cannot pass upon this contract—it may be that I will be called upon to advise the jury to disregard these as having nothing to do with the letters you have

introduced; but your contract here is one by correspondence, isn't it?

Mr. CULLINAN.—Yes, your Honor.

The COURT.—You have no express formal contract except what is to be drawn from these letters?

Mr. CULLINAN.—Exactly, your Honor.

The COURT.—The objection is overruled.

To the said ruling plaintiffs then and there duly excepted.

EXCEPTION NO. 2.

Said letter was marked Defendant's Exhibit "B," and was and is in words and figures following, to wit:

Defendant's Exhibit "B"—Letter, Dated San Francisco, December 3, 1915, from J. W. Chapman to J. D. Spreckels & Bros. Co.

CHAPMAN and THOMPSON.

San Francisco, December 3d, 1915.

J. D. Spreckels & Bro., Co.,

General Agents,

Java-Pacific Line,

60 California Street,

San Francisco, Cal.

Gentlemen:

Attention Mr. Connors.

In re Your letter Dec. 2d—

We have booked firm 360 tons Steel Bars for account of Pacific Coast Steel Co., destined Hong Kong for shipment on S. S. "Arakan" or substitute scheduled to sail from San Francisco on or about Feb. 19th, 1916; freight Rate from San Francisco to Hong Kong \$8.00 per ton of 2000 lbs.

You have also given us option for 750 ton steel Bars in addition to the above, for shipment from San Francisco to Hong Kong and Manila or Java, Ports of call our option. Freight to Hong Kong and Manila \$8.00 per ton of 2000 lbs.; Java Ports \$10.00 per ton of 2000 lbs.

This option expires at 5 P. M. December 6th, 1915.

Yours very truly,

JWC/JEC.

J. W. CHAPMAN.

Mr. FRANK.—Now, I offer in evidence a letter from Chapman and Thompson to the J. D. Spreckels & Bros. Company, dated December 9, 1915.

Mr. HARWOOD.—The same objection to the letter last offered in evidence.

The COURT.—The same ruling.

To the said ruling the plaintiffs then and there duly excepted. [61]

EXCEPTION NO. 3.

Said letter was marked Defendant's Exhibit "C" and was and is in words and figures following, to wit:

Defendant's Exhibit "C"—Letter, Dated San Francisco, December 9, 1915, from J. W. Chapman to J. D. Spreckels & Bros. Co.

CHAPMAN AND THOMPSON.

San Francisco, Dec. 9th, 1915.

Messrs. J. D. Spreckels Bros. & Co.,

California & Davis Streets,

City.

Gentlemen:—

Attention Mr. Connors.

Referring to our letter of December 3d, also telephone conversation, we desire to book firm the 750

tons of space for steel bars on which you had given us an option for shipment on your S. S. "Arakan" or substitute, scheduled to sail from San Francisco on or about February 19th, 1916; freight rate from San Francisco to Hongkong and Manila \$8.00 per ton, and to Java ports of call \$10.00 per ton of 2,000 lbs. We have the option of shipping all or any part of this tonnage to either Hongkong, Manila or any of the Java ports.

Will you please acknowledge receipt?

Yours very truly,

JWC/KW.

J. W. CHAPMAN.

Mr. FRANK.—Now, I have a letter dated December 10, 1915, from the J. D. Spreckels & Bros. Company to Mr. J. W Chapman. I offer it in evidence.

Mr. HARWOOD.—It is objected to upon the ground it is immaterial, irrelevant and incompetent, and an attempt to vary by parol or extrinsic evidence the contents of a written contract complete in itself formed by the two letters set forth in the complaint.

The COURT.—I shall have to hear these letters. As I say, if they are found to have no bearing they will be eliminated; this is a question solely for the Court; the jury will have nothing to do with it in all probability—that is, I mean unless there is some question of fact as to adoption or something of that kind; the question as to what constitutes the contract is a question for the Court and it has to instruct the jury upon that. Proceed.

To the said ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 4.

Said letter was marked Defendant's Exhibit "D," and was and is [62] in words and figures following, to wit:

Defendant's Exhibit "D"—Letter, Dated San Francisco, December 10, 1915, from J. S. Spreckels & Bros. Co. to J. W. Chapman.

JAVA-PACIFIC LINE.

San Francisco, Cal., Dec. 10, 1915.

Mr. J. W. Chapman,
100 California St.,
San Francisco.

Dear Sir:

Replying to your letter of December 9th:

I note that you book firm 750 tons steel bars by our SS. "Arakan," to sail from San Francisco about February 19th, 1916, to Hongkong and Manila, at a rate of 40¢ per 100 lbs., and to Java ports of call at 50¢ per 100 lbs. All of which we confirm.

Please give us complete details of this shipment as early as possible.

Yours very truly,
J. S. SPRECKELS & BROS. CO.,
General Agents.
Per pro F. F. C.

Mr. FRANK.—Now, I offer in evidence the letter received from the Pacific Coast Steel Company.

Mr. HARWOOD.—This is objected to upon the same ground as the ground stated in the objection to the last letter, and upon the further ground that it is correspondence between one of the parties to this ac-

tion and another party who is not a party to the action; in other words, it is not correspondence between parties to the action at all.

Mr. FRANK.—The witness Chapman testifies that he is traffic manager for the Pacific Coast Steel Company; it is with reference to this particular agreement.

The COURT.—It is addressed to the Spreckels Company?

Mr. FRANK.—Yes, it is addressed to the Spreckels Company.

Mr. CULLINAN.—The witness has not testified that in the transactions involved in this litigation he was the representative of the Pacific Coast Steel Company?

The COURT.—No, that is true, but you cannot take the mere statement of the witness as fiat. If those letters show it was all one transaction it will be construed as such, otherwise it will not; the Court cannot take your statement as to what constitutes this contract if in fact there were other portions of the correspondence which affect its construction. That is the only proposition. [63]

Mr. FRANK.—This is on the letter-head of the Pacific Coast Steel Company.

Mr. HARWOOD.—Does your Honor overrule the objection to its introduction?

The COURT.—Yes.

Mr. HARWOOD.—Exception.

To the said ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 5.

Said letter was marked Defendant's Exhibit "E," and was and is in words and figures following, to wit:

Defendant's Exhibit "E"—Letter, Dated San Francisco, January 28, 1916, from Pacific Coast Steel Co. to J. D. Spreckels & Bros. Co.

PACIFIC COAST STEEL COMPANY.

San Francisco, January 28, 1916.

J. D. Spreckels Bros. Co.,

General Agents Java Pacific Line,

San Francisco, California.

Gentlemen:

This will confirm firm booking for 1110 tons of 2000# each, of bar iron and steel, under 30 feet in length, for shipment from San Francisco to Hong-kong and Manila on the S. S. "Arakan" scheduled to sail February 19.

This is in accordance with the booking made by Chapman & Thompson.

Yours very truly,

PACIFIC COAST STEEL COMPANY.

ED R. MORRISON,

ERM NLH.

For Foreign Sales Manager.

The COURT.—You see that letter would tend of itself to show that it was based on previous correspondence had by Chapman & Thompson.

Mr. FRANK.—I believe it is alleged in the complaint that thereafter and during the month of February, 1915, plaintiff caused to be shipped on defendant's steamer which sailed from San Francisco in the month of February 1110 weight tons of bar

iron under 30 feet in length and caused to be paid to defendants for the transportation thereof to Hong Kong and to Manila charges at the rate of \$8.00 per ton. Then it proceeds, that said freight was shipped and said charges were paid under and in pursuance of said contract between plaintiff and defendant, evidenced by said letter of January 27, 1916, [64] and February 12, 1916. I call your Honor's attention to that because that shows what the issues are. That is denied. That has to do with the relevancy of that testimony, but at any rate the pleadings show that that contract was carried—that that portion of the contract was carried out, the 1110 tons, which is the first item in the letter upon which the plaintiffs rely.

Mr. HARWOOD.—That is, if the Court please, the shipments in the month of February were made.

Mr. FRANK.—Yes, that is right. We will take up now the March shipments. I offer in evidence the letter from J. W. Chapman to Messrs. J. D. Spreckels & Bros. Company under date of December 24, 1915.

Mr. HARWOOD.—This is objected to as immaterial, irrelevant and incompetent and an attempt to vary by parol or extrinsic evidence the contents or terms of a valid written contract set forth in the complaint.

Mr. FRANK.—I want to ask you, Mr. Chapman, that is your initialing here, isn't it?

Mr. HARWOOD.—Yes, and it is admitted that the change was made before the letter was sent.

The COURT.—The objection is overruled.

To the said ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 6.

“ Said letter was marked Defendant’s Exhibit “F,” and was and is in words and figures following, to wit:
Defendant’s Exhibit “F”—Letter, Dated San Francisco, December 24, 1915, from J. W. Chapman to J. D. Spreckels & Bros. Co.

CHAPMAN and THOMPSON.

San Francisco, Dec. 24th, 1915.

Subject: Booking and request for option for space account Pacific Coast Steel Company.

Messrs. J. D. Spreckels & Bros. Co.,

California & Davis Sts.,

City.

Gentlemen:

This will confirm conversation with your Mr. Edwards wherein we have booked firm for account

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I. W. C. of the Pacific Coast Steel Company 400 tons of bar steel, 20 feet and under in length, for shipment on your steamer “Tjisondari,” or substitute, scheduled to sail about March 23d for Hongkong or Manila. Freight rate \$10.00 per ton of [65] 2,000 lbs.

In line with our conversation, we desire all of the additional space we can secure on this steamer up to 1,000 tons, and we trust you will be able to give us the additional space.

We wish to call your attention to the fact that our steel is manufactured at San Francisco, and our only

opportunity of shipping is via the lines sailing from this port, and for this reason we feel that we should be given preference over the Eastern manufacturers, as they only ship from the port of San Francisco when they cannot secure space through the Atlantic Seaboard ports.

Yours very truly,

JWC/KW.

J. W. CHAPMAN.

Mr. FRANK.—Now, I offer in evidence a letter from the Pacific Coast Steel Company, dated March 3, 1916.

Mr. HARWOOD.—This is objected to upon the ground it is immaterial, irrelevant and incompetent, and an attempt to vary by parol or extrinsic evidence the contents of the contract set forth in the complaint, upon the further ground it is immaterial, irrelevant and incompetent, because it is not part of the correspondence between the parties in this case, and upon the further ground that it is a letter written after the breach of contract counted upon in the complaint.

The COURT.—That is a letter from the Pacific Coast Steel Company to whom?

Mr. FRANK.—To J. D. Spreckels & Bros. Company, I might inform your Honor that it refers on its face to a letter written to Messrs. Chapman & Thompson upon this subject and which was by Mr. Harwood presented to me on the 1st of March while this controversy of breach was still open and subsequently a copy of it sent to us by Mr. Chapman making that statement. The two letters should go together.

Mr. HARWOOD.—That letter was written after the breach of contract sued upon in the complaint.

The COURT.—It will be admitted subject to the same consideration I have heretofore suggested.

To the said ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 7. [66]

Said letter was marked Defendant's Exhibit "G," and was and is in words and figures following, to wit:

Defendant's Exhibit "G"—Letter, Dated March 3, 1916, from Pacific Coast Steel Co. to J. D. Spreckels & Bros. Co.

PACIFIC COAST STEEL COMPANY.

March 3, 1916.

J. D. Spreckels & Bros. Company,
Central Agents, Java Pacific Line,
City.

Dear Sirs:—

Referring to conversation during the recent visit of your Mr. Connor with regard to our letter of March First to Messrs. Chapman & Thompson, beg to refer you to letter dated Dec. 24, 1915, from J. W. Chapman to your Company, booking for our account of 400 tons of bar steel twenty feet and under in lengths for shipment on your steamer "Tjisondari," scheduled to sail about March 23d for Hong Kong and Manila. Under this letter we are entitled to ship this 400 tons in March.

This material is already rolled and we would thank you to advise us date same will be accepted at the boat. Chapman & Thompson offered us space on

April and May sailings, but same was declined by us. Our letter of March First to Chapman & Thompson does not refer to booking per the above-mentioned letter of December 24th.

Yours very truly,

PACIFIC COAST STEEL COMPANY.

By E. M. WILSON,
President.

ENW/B.

Mr. FRANK.—And now the letter from Mr. Harwood to us embodying the other letter.

Mr. HARWOOD.—Objected to as immaterial, irrelevant and incompetent and an attempt to vary by parol or extrinsic evidence the contents of the contract set forth in the complaint, and upon the further ground that it was written after the breach of contract counted upon here, and the further objection is that the letter was written after the complaint was filed.

The COURT.—The only question is, you are counting on a contract to be deduced from correspondence. Now, all the correspondence relating to the transaction must be in evidence in order for the Court to say, in the first place, whether there was a contract; and in the second place, what its terms were.

Mr. HARWOOD.—We are counting upon a contract by correspondence; we are counting upon a contract which was finally completed as set forth in the two letters which are the two final letters of the correspondence; all the other letters, if they attempt to contradict any of the terms of those two letters,

are merged in the two [67] letters, just as if the two letters had been a formal written contract.

The COURT.—I understand that, but that does not answer the query the Court must make as to who that contract was made with and what that correspondence related to. Objection overruled.

To the said ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 8.

Said letter was marked Defendant's Exhibit "H," and was and is in words and figures following, to wit:

Defendant's Exhibit "H"—Letter, Dated San Francisco, March 1, 1916, from Pacific Coast Steel Co. to Messrs. Chapman & Thompson.

NOTICE.

To Java Pacific Line and to John D. Spreckels & Bros. Company, Its General Agents:

On the first day of March, 1916, the undersigned caused to be exhibited to your attorney, Nathan H. Frank, Esq., a letter bearing date the 1st of March, 1916, signed by Pacific Coast Steel Company, and addressed to the undersigned. Said letter was and is as follows, to wit:

"PACIFIC COAST STEEL COMPANY.

San Francisco, Cal., March 1, 1916.

Messrs. Chapman & Thompson,

Fife Building,

San Francisco, California.

Dear Sirs:

We note your statement to the effect that the Java Pacific Line claims that your contract with them

for space on their steamers sailing for Hong Kong and Manila is not a contract with you as principals, but only as agents for us. This claim is not founded in fact. Under our employment of you as traffic managers we expected that you would allow us to use such space as you had available and we desired, but the contract which you have with that line for space was not made by you as our agents and we are not your principals in the matter.

Very truly yours,

PACIFIC COAST STEEL COMPANY.

By E. M. WILSON,

President."

DATED: March 14th, 1916.

J. W. CHAPMAN,

P. R. THOMPSON,

Copartners Doing Business Under the Firm Name
of Chapman & Thompson.

Mr. FRANK.—That is the letter referred to in the last letter written by the Pacific Coast Steel Company, where they wish to except from that statement the contract with respect to the 300 tons in the March shipment. Now, with reference to the April shipments, I offer a letter from J. W. Chapman to Spreckels & Brothers, dated December [68] 24, 1915.

Mr. HARWOOD.—Objected to as irrelevant, immaterial and incompetent, and tends to vary by parol or extrinsic evidence the contents of the contract set forth in the complaint.

The COURT.—Objection overruled.

To the said ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 9.

Said letter was marked Defendant's Exhibit "I," and was and is in words and figures following, to wit:

Defendant's Exhibit "I"—Letter, Dated San Francisco, December 24, 1915, from J. W. Chapman to J. D. Spreckels & Bros. Co.

CHAPMAN and THOMPSON.

San Francisco, Dec. 24th, 1915.

Subject: Option account Pacific Coast Steel Company.

Messrs. J. D. Spreckels & Bros. Co.,

Agents, Java-Pacific Line,

Davis & California Sts.,

City.

Gentlemen:

This will confirm conversation with your Mr. Edwards, wherein you have given us option for space good until 5 P. M., December 28th, for 750 tons bar iron, 20 feet and under in length, for shipment from San Francisco to Hongkong or Manila on your steamer "KARIMOEN," or substitute, scheduled to sail about April 22d.

Any tonnage booked under this option to be at the rate prevailing for this steamer, and we trust you will quote us definite rate at your earliest convenience.

Please acknowledge receipt.

Your very truly,

J. W. CHAPMAN.

JWC/KW.

Mr. FRANK.—Another letter between the same parties on the same date.

Mr. HARWOOD.—The same objection as to the last letter.

The COURT.—Objection overruled.

To the said ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 10.

Said letter was marked Defendant's Exhibit "J," and was and is in words and figures following, to wit:

Defendant's Exhibit "J"—Letter, Dated San Francisco, December 24, 1915, from J. W. Chapman to J. D. Spreckels & Bros. Co.

CHAPMAN and THOMPSON.

San Francisco, Dec. 24th, 1915.

Subject: Option account Pacific Coast Steel Company.

Messrs. J. D. Spreckels & Bros. Co.,

Davis & California Sts.,

City. [69]

Gentlemen:

Referring to our letter of to-day covering option for space for 750 tons on your steamer scheduled to sail about April 22nd for Hongkong and Manila.

We would like to have option for 250 tons additional, bringing the total up to 1,000 tons. Will you please advise if you can grant us this additional option.

Yours very truly,

J. W. CHAPMAN.

JWC/KW.

Mr. FRANK.—A letter from Chapman to Spreckels, dated December 30, 1915.

Mr. HARWOOD.—The same objection as made to the last letter, and an exception to the Court's ruling.

The COURT.—Yes.

To the said ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 11.

Said letter was marked Defendant's Exhibit "K," and was and is in words and figures following, to wit:

Defendant's Exhibit "K"—Letter, Dated San Francisco, December 30, 1915, from Chapman & Thompson to J. D. Spreckels & Bros. Co.

CHAPMAN AND THOMPSON.

San Francisco, Dec. 30, 1915.

Subject: April space on account PACIFIC COAST STEEL CO.

J. D. Spreckels & Bros.,
Agts. Java Pacific Line,
San Francisco, Cal.

Gentlemen:

This will confirm conversation with your Mr. Edwards, wherein we have booked firm space for one thousand (1000) tons bars iron, twenty feet and under in length, for shipment from San Francisco to Hong Kong or Manila, on your Steamer "KARIMOEN" or substitute, scheduled to sail about April 22nd, rate to beat the prevailing rate for this steamer,

which we understand will be announced by you about January 20th.

Please acknowledge receipt.

Very truly yours,

CHAPMAN & THOMPSON.

By J. W. CHAPMAN.

JWC/FM.

Mr. FRANK.—Now, as to the May shipment, we offer a letter of December 24, 1915, from Chapman to Spreckels.

Mr. HARWOOD.—The same objection as that made to the last letter.

The COURT.—The same ruling.

To the said ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 12. [70]

Said letter was marked Defendant's Exhibit "L," and was and is in words and figures following, to wit:

Defendant's Exhibit "L"—Letter, Dated San Francisco, December 24, 1915, from J. W. Chapman to J. D. Spreckels & Bros. Co.

CHAPMAN AND THOMPSON.

San Francisco, Dec. 24th, 1915.

Subject: Option Account Pacific Coast Steel Company.

Messrs. J. D. Spreckels & Bros. Co.,

Agents, Java-Pacific Line,

Davis & California Sts.,

City.

Gentlemen:

This will confirm conversation with your Mr.

Edwards wherein you have given us option for space good until 5 P. M., December 28th, for 1000 tons bar iron, 20 feet and under in length, for shipment from San Francisco to Hong Kong or Manila on your steamer "TJIKEMBANG," or substitute, scheduled to sail about May 22nd.

Any tonnage booked under this option to be at the rate prevailing for this steamer, and we trust you will quote us definite rate at your earliest convenience.

Please acknowledge receipt.

Yours very truly,

J. W. CHAPMAN.

JWC/KW.

Mr. FRANK.—A letter from Chapman to Spreckels dated December 30.

Mr. HARWOOD.—Objected to on the same grounds mentioned in the objection to the last letter.

The COURT.—The same ruling.

To the said ruling the plaintiffs then and there duly excepted:

EXCEPTION NO. 13.

Said letter was marked Defendant's Exhibit "M," and was and is in words and figures following, to wit:

Defendant's Exhibit "M"—Letter, Dated San Francisco, December 30, 1915, from Chapman & Thompson to J. D. Spreckels & Bros. Co.

CHAPMAN and THOMPSON.

San Francisco, December 30, 1915.

Subject: May Option on Account Pacific Coast Steel Co.

J. D. Spreckels & Bros. Co.,
Agts. Java Pacific Line,
City.

Gentlemen:

Referring to our letter of December 24th, regarding the option for space for one thousand tons of bar iron, twenty feet and under in length, for shipment from San Francisco to Hong Kong or Manila, on your steamer "Tjikenbang" or substitute, scheduled to sail about May 22nd. In accordance with an arrangement with your Mr. Edwards, this option has been extended to noon, January 3, 1916.

Please confirm.

Very truly yours,

CHAPMAN & THOMPSON.

By J. W. CHAPMAN.

JWC/FM.

Mr. FRANK.—A letter of January 10, 1916, from Chapman to [71] Spreckels.

Mr. HARWOOD.—That is objected to on the same grounds as the other letter was objected to.

The COURT.—The same ruling.

To the said ruling the plaintiffs then and there duly excepted:

EXCEPTION NO. 14.

Said letter was marked Defendant's Exhibit "N," and was and is in words and figures following, to wit:

Defendant's Exhibit "N"—Letter, Dated San Francisco, January 10, 1916, from Chapman & Thompson to J. D. Spreckels & Bros. Co.

CHAPMAN and THOMPSON.

San Francisco, Jan. 10, 1916.

J. D. Spreckels & Bros. Co.,
Agts. Java Pacific Line,
California and Davis Sts.,
City.

Gentlemen:

This will confirm conversation with your Mr. Edwards wherein we have made firm booking for space for one thousand (1000) tons of bar steel, twenty feet and under in length for account Pacific Coast Steel Co., for shipment from San Francisco to Hong Kong or Manila, on your steamer "TJIKE-BANG," or substitute, scheduled to sail about May 22nd.

Freight rate to be at the prevailing rate for this steamer which we understand will be announced by you in February.

Please acknowledge receipt.

Yours very truly,

CHAPMAN & THOMPSON.

By J. W. CHAPMAN.

JWC/FM.

Mr. FRANK.—A letter from J. D. Spreckels & Brothers Company to Messrs. Chapman & Thompson, dated February 29, 1916.

Mr. HARWOOD.—If your Honor please, this is a letter written by the defendants in the case to the plaintiffs in the case after the breach of the contract, and is an attempt on the part of the defendants in the case to explain why they broke the contract; it is objected to on the ground it is immaterial, irrelevant and incompetent and a self-serving declaration. I would like your Honor to read it yourself.

Mr. FRANK.—Your Honor will appreciate what it is when you call to mind the letter introduced in evidence by the plaintiffs of February 26, 1916, I would say further that whatever may have been the effect of the letter of February 26th, it was not treated by the [72] plaintiff as being the end of the matter, because there is further correspondence that I will introduce that will show that.

Mr. HARWOOD.—To try and compromise the matter afterwards.

Mr. FRANK.—No, it was not a question of compromise.

Mr. HARWOOD.—Yes, the letters will show it. We wanted you to withdraw your repudiation and take the freight. The breach of the contract is clearly shown by the letter of February 26th. I do not think any self-serving letter written afterwards would be material in the case. It certainly could not excuse the breach.

Mr. FRANK.—If your Honor will read these further letters on the subject, since the suggestion has been made that there was a breach of the contract,

I think that your Honor will see that the letter is material.

The COURT.—Well, I do not myself see how this can be regarded as aiding the Court in the interpretation of this contract.

Mr. FRANK.—No, I am done with that your Honor. Your Honor understands the suggestion in there. We had assigned a reason for refusing and before the suit was brought we wanted them to be possessed of the true reason. Your Honor appreciates the legal effect of that.

Mr. HARWOOD.—The legal effect seems to be nothing. The letter of February 26th, is a clear repudiation of the contract as a matter of law. Under all the authorities, it is a clear repudiation of the contract.

The COURT.—Mr. Harwood, whatever constituted the correspondence up to the time the breach occurred, the Court must consider in determining what the contract was, but I do not see what bearing this has upon it.

Mr. FRANK.—Not upon the construction of the contract. Your Honor will recollect the position taken in the case of the Sacramento-Stockton Steamship Company against the Aetna Insurance Company; [73] your Honor understands the proposition about estoppel.

The COURT.—This is the letter of repudiation, isn't it?

Mr. FRANK.—That is one letter. We will let go by the question whether or not that is a repudiation. Our contention is that until the repudiation

is accepted as such by the other parties, it is not a breach of the contract.

The COURT.—I see what you mean.

Mr. FRANK.—And I have other correspondence there which shows what the position was up to the time suit was brought.

The COURT.—I will let it go in.

To the said ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 15.

Said letter was marked Defendant's Exhibit "O," and was and is in words and figures following, to wit:

Defendant's Exhibit "O"—Letter, Dated San Francisco, February 29, 1916, from J. D. Spreckels & Bros. Co. to Chapman & Thompson.

JAVA PACIFIC LINE.

San Francisco, Cal., Feb. 29, 1916.

Messrs. Chapman & Thompson,
Fife Building,
San Francisco.

Gentlemen:

Referring to our letter of Feb. 26th regarding space reservations on our Java-Pacific Line Steamers:

When you applied to us on Nov. 27th, 1915, for space, you claimed to represent the Pacific Coast Steel Co., and we booked various quantities of steel for their account upon your requests. Each of your written requests state thereon that such space or options were for account of the Pacific Coast Steel Co.

Your claim that the contract for space is for your account is not well founded and your attempt to sell the same is a fraud upon us. That is our real reason for cancelling your reservations, and we only assigned the reasons mentioned in our letter of Feb. 26th because we desired to close the matter with as little friction as possible. Since you have placed the matter in the hands of your lawyer, it becomes proper and necessary that the real issue between us shall be properly stated.

We therefore now advise you that all further dealings by us in the matter shall be with your principal, the Pacific Coast Steel Co., direct.

Yours very truly,

J. D. SPRECKELS & BROS. COMPANY,

General Agents.

FRED F. CONNOR,

Traffic Manager.

C-470-E.

Mr. FRANK.—Now I understand, Mr. Harwood, that for the purpose of showing that neither of those letters was accepted as a repudiation [74] of the contract at that time, I have four letters here between Mr. Harwood and myself upon the subject, each representing the parties, and unless you desire me to read it all, I shall just read the portion of it which refers to the particular matter that I have in view.

Mr. HARWOOD.—You had better offer each letter by itself, and I will object to it.

Mr. FRANK.—Then I will offer the letter writ-

ten by Mr. Harwood to Spreckels & Brothers under date of February 28, 1916.

Mr. HARWOOD.—That is objected to as immaterial, irrelevant and incompetent, in this case; it was after the breach of contract and was about the matter relating to a compromise of adjustment between the parties; it is just as irrelevant as the letter written by the defendant in this case which your Honor has just passed upon.

Mr. FRANK.—I will ask your Honor just to read the last paragraph of this letter.

The COURT.—The only materiality would be if it tends to put a construction upon the transaction.

Mr. FRANK.—I am only doing this out of an abundance of precaution, so that we may have the record straight.

The COURT.—I will let it go in.

To the said ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 16.

Mr. FRANK.—And the reply to that letter is now offered in evidence.

Mr. HARWOOD.—The same objection as to the letter from myself.

The COURT.—The same ruling.

To the said ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 17.

Mr. FRANK.—It is dated February 29, 1916, and reads as follows: [75] (Reads). In reply to that letter I will offer a letter from Mr. Harwood dated March 1st, 1916.

Mr. HARWOOD.—Objected to on the same grounds as stated to the other two letters.

The COURT.—Objection overruled.

To the said ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 18.

The COURT.—These are only admitted upon the question of whether the letter relied upon by you was treated as a repudiation.

Mr. FRANK.—That is the purpose of the offer. The reply thereto I now offer, under date of March 2d, 1916.

Mr. HARWOOD.—The same objection.

The COURT.—The same ruling.

To the said ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 19.

Said letters were here marked Defendant's Exhibit "P," and were and are in words and figures following, to wit:

Defendant's Exhibit "P"—Letter, Dated San Francisco, February 28, 1916, from Alfred J. Harwood to J. D. Spreckels & Bros. Co.

ALFRED J. HARWOOD,

Law Offices.

San Francisco, California,

February Twenty-eighth, Nineteen Sixteen.

Messrs. J. D. Spreckels & Bros. Company,

General Agents, Java-Pacific Line,

San Francisco, California.

Dear Sirs:

Messrs. Chapman & Thompson have consulted me

with reference to their contract for space on your steamships sailing in March and April.

Chapman & Thompson have a contract in writing with you under which you are obligated to furnish them with 300 tons weight space for March shipment and 1,000 tons weight space for April shipment. This contract is evidenced by their letter of January 27, 1916, and your letter of February 12, 1916. The rates are specified in the contract.

By their letter of the 25th instant they sought to modify their contract with you so as to permit them to ship 250 tons measurement in April, deducting this amount from the booking of 1,000 tons weight space for April, as per contract.

In your letter of the 26th instant you state in reply to their letter of the 25th instant: "In going over our record of the bookings for March and April, we find that the steamers have been overbooked, and we are therefore obliged to say that we will be unable to [76] accept any freight from you on our March and April steamers."

I have advised my clients that the letter is a clear repudiation of your contract on your part, which constitutes a breach and renders you and your principal liable for all damages which Chapman and Thompson may sustain by reason of your refusal to perform.

Relying upon their contract with you, Chapman & Thompson have already contracted for part of the space covered thereby. Chapman & Thompson are prepared to use the 300 tons of space reserved for March. If you persist in your repudiation of your

contract they will be obliged to pay from \$40 to \$50 per ton or from \$12,000 to \$15,000 for this space, which you agreed to furnish for \$3,000. You will be liable in damages for the difference. Part of the 1,000 tons for April shipment has been contracted for by Chapman & Thompson at from \$40 to \$50 per ton, and they are now in a position to contract for the balance at the same figures. Your repudiation of your contract will render you liable to Chapman & Thompson for damages amounting to between \$15,000 and \$25,000.

Chapman & Thompson have bound themselves in writing to deliver a part of this 1,000 tons of space and they will be liable in damages to the parties with whom they have contracted if through your breach of your contract they are unable to comply with their contracts. In addition to being liable for the loss of profits sustained by Chapman & Thompson, you and your principal will also be liable to them for all damages which these parties may recover, including, in my opinion, the cost and expense of defending any suits which these parties may prosecute.

Furthermore, it may be impossible to obtain this space at all in which event you will be liable for all damages resulting from inability to make shipments during the months specified in the contract.

My clients wish to avoid litigation in this matter and hereby give you the opportunity of withdrawing your repudiation of your contract.

Unless they receive from you before 4 P. M. to-day a letter stating that you have withdrawn your repu-

diation they will treat the contract as repudiated by you and will be governed accordingly.

Very truly yours,
ALFRED J. HARWOOD.

AJH:MS.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys at Law.

San Francisco, Cal., February 29, 1916.

Alfred J. Harwood, Esq.,

Attorney at Law,

Kohl Building,

San Francisco, Calif.

Dear Sir:—

In re: Claim of Chapman & Thompson vs. Java
Pacific Line.

Your letter of the 28th inst., respecting the above matter, has been submitted to me for reply. Feeling that, with all of the facts before you, you would be inclined to change your views regarding the liability of the Java-Pacific line under said contract I take the liberty of advising you that the contract therein referred to was not a contract with Chapman & Thompson as principals, but only as agents for the Pacific Coast Steel Co., and that the correspondence to which you refer in your said letter is only a part of the correspondence touching said matter. We suggest that you call upon Messrs. Chapman & Thompson for the correspondence that preceded said letters of January 27th and February 12th, in which you will find that my statement regarding the principal in said contract will be verified.

Under the circumstances, Messrs. Chapman & Thompson had no [77] space on any of the ships, and hence can suffer no damage by being refused such space. So far as concerns the Pacific Coast Steel Co., the matter will be taken up with them directly.

We feel certain that when you thoroughly understand the circumstances connected with this transaction, you will advise your clients that they have no cause of action in the premises.

Very truly,

Yours, &c.,

NATHAN H. FRANK.

ALFRED J. HARWOOD,

Law Offices.

San Francisco, March First, Nineteen Sixteen.

Nathan H. Frank, Esq.,

Attorney at Law,

1215 Merchants' Exchange Building,

San Francisco, California.

Dear Sir:

Re Claim of Chapman & Thompson vs. Java-Pacific
Line.

Your letter of yesterday was duly received. The information which you have received to the effect that the contract was not a contract with Chapman & Thompson is incorrect. The fact is that the contract was made with Chapman & Thompson.

I understand your position to be as follows: That your client assumed that the freight under the contract with Chapman & Thompson would all be shipped by Pacific Coast Steel Company and that

your client repudiated the contract because Chapman & Thompson sought to transfer to other shippers certain of their rights under the contract. I understand from you that the assumption that the freight would all be shipped by Pacific Coast Steel Company is based upon statements made in letters from Chapman & Thompson written during the progress of the negotiations leading up to the execution of the contract.

It is doubtless the case that Chapman & Thompson expected that certain of the space covered by the contract would be utilized by Pacific Coast Steel Company; but in my opinion they had the undoubted right to use all or any part of it themselves, or to sell all or any part thereof to whomsoever they pleased. Your client, as I see the case, was interested only in obtaining its compensation for the transportation and it was wholly immaterial to it whether Chapman & Thompson themselves, or the Pacific Coast Steel Company, or any other firm, used the space covered by the contract. If for some reason, which is not apparent, your client had wished to carry only for the Pacific Coast Steel Company, it should, in my opinion, have inserted in the contract a provision restricting the right to ship to Pacific Coast Steel Company.

The position which your client now assumes, it seems to me, amounts in effect to this: That a contract such as the one here involved is nonassignable, or in other words, that it is personal. According to your letter, your client claims that the contract was only nominally with Chapman & Thompson and that

the real party in interest is Pacific Coast Steel Company. This claim is wholly unfounded; but let us assume, for the purpose of the argument, that it was founded in fact. Under such assumption the contract would be as much the contract of Pacific Coast Steel Company as if that company had signed it. Let us assume further that they actually did sign it. If the position of your client is sound the Pacific Coast Steel Company could not assign any rights under the contract.

I have now prepared and have ready for filing a complaint to recover the damages which my clients have sustained by reason of your [78] client's repudiation of this contract. Unless the claim of my clients is satisfactorily compromised without delay this complaint will be filed at 9 A. M. on Friday, the 3d instant. Chapman & Thompson are very desirous of avoiding litigation in this matter, but in justice to themselves cannot longer defer the commencement of an action to enforce their rights.

Very truly yours,

ALFRED J. HARWOOD.

AJH:MS.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys at Law.

San Francisco, Cal. March 2, 1916.

Alfred J. Harwood, Esq.,

Attorney at Law,

414 Kohl Building,

San Francisco, Cal.

Dear Sir:—

Chapman & Thompson vs. Java-Pacific Line.

I have to acknowledge your letter of yesterday upon the above subject, and thank you for the frank statement of your position therein contained.

However, I am still of the opinion that your clients have no claim against the Java-Pacific Line in the premises, and am only sorry that you do not agree with me in that respect.

While we agree with you in your desire to avoid litigation I do not feel that I am in a position to ask you to postpone the commencing of your proposed action, though I sincerely hope that you will give the matter further consideration before doing so.

Very truly,

Yours, &c.,

NATHAN H. FRANK.

Testimony of F. F. Connor, for Defendants.

F. F. CONNOR was thereupon called as a witness for the defendants, and being duly sworn testified as follows:

(In answer to Mr. FRANK.)

Q. Mr. Connor, during the time here in question you were the traffic manager for the Java-Pacific,

(Testimony of F. F. Connor.)

under J. D. Spreckels Brothers & Company as agents? A. Yes, sir.

Q. Do you know whether or not the 300 tons of iron mentioned in the correspondence here and which in the letter of March 3, 1916, Defendant's Exhibit "G," is spoken of by the Pacific Coast Steel Company as 400 tons of bar steel booked for their account by Chapman & Thompson was actually received from the Pacific Coast Steel Company and transported in accordance with the terms of this correspondence? A. It was—

Mr. HARWOOD.—One moment; I would like to interpose an objection [79] to the question. The question is objected to as immaterial, irrelevant and incompetent as to whether or not some third party shipped freight with the defendants in this case.

The COURT.—Well, that is the whole question, whether it was a third party.

Mr. HARWOOD.—And upon the further ground that the question calls for the conclusion of the witness whether the shipment of 300 tons was made in pursuance of a certain contract, or not.

The COURT.—He does not state that. He said whether the 300 tons mentioned in the correspondence was received by them and carried.

Mr. HARWOOD.—I think that is tantamount to saying it was in pursuance to that contract.

The COURT.—He is not saying it was in pursuance of that contract at all, if you have a contract here with the defendant; he is not testifying it was made in pursuance to that contract. He is testify-

ing that it was in pursuance to the contract that is really exhibited by this correspondence as they are contending for it. That does not determine it, you understand.

To the said ruling the plaintiffs then and there duly excepted.

EXCEPTION No. 20.

The COURT.—That was for the March shipment?

Mr. FRANK.—That was for the March shipment. That is all.

DEFENDANTS THEREUPON RESTED.
[80]

The plaintiffs thereupon offered and there was received in evidence and read a letter from the defendants to the plaintiffs, which letter was marked Plaintiffs' Exhibit 4, and was in the words and figures following, to wit:

**Plaintiffs' Exhibit 4—Letter, Dated San Francisco,
January 22, 1916, from J. D. Spreckels & Bros.
Co. to Chapman & Thompson.**

JAVA-PACIFIC LINE.

San Francisco, Cal., Jan. 22, 1916.

Messrs. Chapman & Thompson,
Fife Bldg.,
San Francisco.

Gentlemen:

Confirming conversation with your Mr. Chapman on January 21st, wish to advise that our books show reservations in your name as follows:

February.....	360	Tons weight
February	750	“ “
March	1000	“ “
April	1000	“ “
May	1000	“ “
June	1000	“ “

Trusting that this is the information you desire and that you will find same agrees with your records, we are,

Yours very truly,

J. D. SPRECKELS & BROS. COMPANY,

General Agents.

FRED F. CONNOR,

Traffic Manager.

Testimony of J. W. Chapman, for Plaintiffs (in Rebuttal).

J. W. CHAPMAN, one of the plaintiffs, was thereupon called as a witness for plaintiffs in rebuttal, and testified as follows:

(In answer to Mr. HARWOOD.)

Q. Do you know Mr. Edwards, Mr. Chapman?

A. Yes.

Q. What is his first name?

A. I cannot recall his first name.

Q. When you knew him, what was his occupation?

A. He was secretary of Mr. Connor, of the Java-Pacific Line, and attended to the recording of bookings.

Q. In what office was he, in the office of the Java-Pacific Line?

(Testimony of J. W. Chapman.)

A. In the office of the Java-Pacific Line.

Q. Was he the secretary of Fred Connor, who has testified in this case? A. Yes.

Q. Now, on or about the 15th day of January, did you have a conversation with Mr. Edwards?

Mr. FRANK.—One moment. I object to that; I do not see that there are any conversations admissible here; there is a written contract [81] pleaded in the complaint.

The COURT.—What is the purpose of this?

Mr. HARWOOD.—The purpose is this: Your Honor has admitted in evidence, probably only tentatively, certain letters referring to negotiations between the parties which preceded the final two letters. These letters, I presume, have only been admitted for one purpose, to show that the parties understood that this space originally should be for the Pacific Coast Steel Company. This testimony which this witness will give will be to the effect that it was orally understood or agreed between the parties that this space was for Chapman & Thompson, and that the former agreement evidenced by the original letters, showing what their intention was in the beginning, that it was for the steel company, was abrogated.

Q. Regarding this conversation with Mr. Edwards, where was it?

A. In the office of the Java-Pacific Line.

Q. About when was it?

A. About the 15th of January.

Q. I will ask Mr. Chapman in regard to this mat-

(Testimony of J. W. Chapman.)

ter of Mr. Edwards' authority. Where was Mr. Edwards' office? A. In the Java-Pacific office.

Q. What was he doing there?

A. At first, Mr. Edwards was handling the booking, and when I went in to talk with the Java-Pacific Company regarding reservation of space, bookings of space, I talked to Mr. Edwards.

Q. Did you ever talk to Mr. Connor about Mr. Edwards—Mr. Fred Connor?

A. Talk to him about Mr. Edwards?

Q. Did Mr. Connor ever say anything to you about consulting Mr. Edwards? A. No, he did not.

Q. When did you first consult Mr. Edwards regarding space? A. Along in November.

Q. Where did you go to consult him, at the office of the Java-Pacific Line?

A. The office of the Java-Pacific Line. [82]

Q. What place in the office was he?

A. He was in the office of the Java-Pacific, adjoining the office occupied by Mr. Connor?

Q. Where was he?

A. In the office of the Java-Pacific, in a room adjoining the room occupied by Mr. Connor.

Q. Did he have in his possession there the bookings, the registers or books, showing the different bookings for the steamers?

Q. Did you see those books? A. Yes, I did.

Q. Did you know Mr. Edwards before you went to that office that time?

A. No; I met him first in November.

Q. Where did you meet him in November?

(Testimony of J. W. Chapman.)

A. In the office of the Java-Pacific.

Q. When you went there, who did you inquire for? A. Inquired for Mr. Connor.

Q. Did you say what you wanted to see him for?

A. I went in and he asked me what I wanted to see him for; I told him I wanted to see Mr. Connor in reference to the option for space of 750 tons in February.

Q. Whom did you say that to?

A. To Mr. Edwards.

Q. Who did you see first when you went into the office? A. Mr. Edwards.

Q. Where did you see him?

A. In the office of the Java-Pacific Line.

Q. What did you say at this time to Mr. Edwards and what did he say to you?

A. You are referring to the conversation of November?

Q. I am referring to the conversation of the 15th of January.

A. On the 15th of January, I called at the office of the Java-Pacific and met at the counter—

The COURT.—You have already gotten into the office. Tell us what occurred there.

A. I asked Mr. Edwards if he had been able to increase the booking space for March shipment. He said, “No, but I have you down on the waiting list, and if there is a possible chance we will give you more space for March.” I said to Mr. Edwards, “You understand that all of these bookings are for Chapman & Thompson.” [83]

(Testimony of J. W. Chapman.)

Mr. HARWOOD.—Q. What did he say?

A. He replied “Yes,” and showed me the book.

Q. Now, did you have a conversation with Mr. Connor over the 'phone about the 20th of January, 1916?

A. Yes, about that date.

Q. That was Mr. Fred Connor?

A. Mr. Fred Connor.

Q. State what Mr. Connor said to you on the 'phone and what you said to him?

A. Mr. Connor asked who would ship the 1110 tons on the February steamer, and I replied that it would be shipped by the Pacific Coast Steel Company. Connor then requested us a letter direct from the Pacific Coast Steel Company to the Java-Pacific Line confirming the bookings, and that they would ship.

Q. Now, I refer to the letter introduced in evidence this morning, “Plaintiff’s Exhibit 4,” which says “Confirming conversation with your Mr. Chapman on January 21st”—I will ask you first if you know who dictated that letter?

A. I do not.

Q. I will ask you, by looking at it can you tell who dictated it?

A. I couldn’t tell who dictated it.

Q. Never mind about that. We will prove it was dictated by Mr. Edwards later. Referring to that conversation which must have been according to that letter the 21st of January, will you state what that conversation was with Mr. Edwards?

A. Mr. Edwards called at the office of Chapman & Thompson in the Fife Building. I requested him to furnish me a list of confirmation of all of the

(Testimony of J. W. Chapman.)

bookings and reservations for Chapman & Thompson for the various months.

Q. What else did you say, if anything?

A. At the same time I stated to Mr. Edwards again, "You understand these bookings are all for Chapman & Thompson."

The COURT.—Q. How did you come to make a statement of that kind, with nothing said on the other side—you had had a lot of dealings with him, hadn't you?

A. Yes, but prior to that it was expected that the Pacific Coast Steel Company would use all or a good [84] part of that space; just prior to the 15th of January they advised us that they would not want it all.

Q. Did you ever advise the defendant of that fact?

A. No, I did not.

Mr. HARWOOD.—Q. On or about the 10th of February did you have a conversation with Mr. Fred Connor? A. I did.

Q. Where?

A. On the floor of the Merchants' Exchange Building.

Q. What was said by you and by Mr. Connor at that conversation?

A. Mr. Connor asked me who would ship the freight on the bookings made by Chapman & Thompson; I replied that we were booking cargo for several local firms, also for some Eastern firms; Connor replied that he would want to be furnished with letters direct from the parties who would actually ship

(Testimony of J. W. Chapman.)

the freight, just prior or a short time prior to the sailing of the steamship.

Cross-examination.

(In answer to Mr. FRANK.)

Q. As a matter of fact, Mr. Chapman, you personally had no freight at all to ship?

Mr. HARWOOD.—I object to that as immaterial, irrelevant, incompetent and not proper cross-examination.

The COURT.—The objection is overruled. It is proper cross-examination of what he has said, that he was making bookings himself.

To the foregoing ruling the plaintiffs duly excepted.

EXCEPTION No. 21.

Mr. FRANK.—Q. Is that right, Mr. Chapman?

A. Chapman & Thompson had no freight themselves to ship.

Q. Now, Mr. Chapman, you have spoken of a conversation with Mr. Connor on the floor of the Merchants' Exchange Building on February 10th. Do you remember that at that time Mr. Connor approached you and said, "I understand you are trying to sell space under the bookings on our vessels."

A. Yes.

Q. What did you reply to it?

A. I replied that we were not. [85]

Q. Did he not then say to you "Understand that you have no space to sell upon our vessels, that those bookings were for the Pacific Coast Steel Company

(Testimony of J. W. Chapman.)

and for no one else? A. No, he did not say that.

Q. Did he say something to that effect?

A. No.

Q. What reply did he make when you said you were not selling it?

A. He replied that he had been informed that space had been offered at rates higher than his published tariffs.

Q. Is that all—by Chapman & Thompson?

A. No, he did not say by Chapman & Thompson.

Q. What did you understand to be the purport of that suggestion?

A. That he was seeking information as to whether or not space had been offered.

Q. He was seeking information from you?

A. Yes.

Q. You told him you were not selling it?

A. Yes.

Q. You think that is all the conversation,—is that what you say now? That is all the conversation that passed between you? A. No, that is not all.

Q. What further did he say?

A. He said, of course anybody selling space at prevailing rates would only have to operate on two or three boats and they would be able to retire; there was an enormous profit in it. We also discussed the volume of dead weight cargo that had been booked, and Mr. Connor explained to me that he would much prefer if he could take some measurement cargo or light bulk, as the iron and steel that we had on his

(Testimony of J. W. Chapman.)

steamers took so much longer to load than the light and bulky freight.

Q. This was all after you had denied you were trying to sell any?

A. After I had stated to him I had not sold any.

Q. Did he ask you whether you were soliciting?

A. No.

Q. Did you state that you were not soliciting?

A. No.

The COURT.—Q. He asked you if you were not trying to sell space, didn't he? A. Yes.

Q. Trying to sell space is soliciting patrons to occupy space, isn't [86] it? You say you did not solicit patronage for the space?

A. At that time we had not, we had made no bookings.

Q. Offering to sell space is soliciting—is equivalent to soliciting people to take space, isn't it?

A. In a general way, yes.

The COURT.—That is what I thought.

Mr. FRANK.—Q. Mr. Chapman, on those two occasions when you say you told Mr. Edwards that these bookings were for account of Chapman & Thompson, why didn't you inform him that the Pacific Coast Steel Company did not want the space?

A. I did not consider it necessary.

Q. Now, you are aware of the fact that so far as your negotiations had then proceeded with these parties in writing, that this space had been engaged for account of the Pacific Coast Steel Company, are you? A. As shown by those letters

(Testimony of J. W. Chapman.)

Q. Shown by the letters; and that they were treating it so as shown by their answers; is that not so? A. I do not recall in their answers—

The COURT.—You know that they were regarding it as space for the steel company, did you not?

A. From our letters they would take it as that, yes.

Mr. FRANK.—Q. And this is the first time according to your present contention that you ever sought or intimated to them either directly or indirectly that you were the parties and the Pacific Coast Steel Company was not; isn't that the case?

A. Yes.

Q. Why, then, when you were trying to disabuse them as you suggest now of the idea that they were contracting with the Pacific Coast Steel Company, didn't you tell them that the Pacific Coast Steel Company would not take it?

A. For the reason that at that time it was not definite that the Pacific Coast Steel Company would not use any of this space; we expected that they would use a part of it.

Q The whole substance of this transaction is simply this: that you [87] were dealing with these parties and gave them to understand that the Pacific Coast Steel Company was the party with whom they were contracting for this space through you and then you were attempting to disabuse them of the idea and you told the secretary of Mr. Connor a number of these bookings are in the name of Chapman & Thompson; is that it,—and without giving

(Testimony of J. W. Chapman.)

them an opportunity to call your attention to the fact that they were booking them in your name for this account?

A. I think that was understood by both Mr. Connor and Mr. Edwards.

Q. What was understood?

A. That the space was booked for Chapman & Thompson on their request that we would furnish the letters from the people who had actually shipped the goods.

Q. You do not want us to think that, Mr. Chapman, in view of these letters, every one of them which say it is for the account of the Pacific Coast Steel Company—you do not want to offer that suggestion, do you?

A. I am simply showing you what Mr. Connor requested me to do.

Q. He requested you to have your principal confirm these bookings; Isn't that what he *request* you to do?

A. He asked me who would ship the cargo under the space booked by us.

Q. When did he ask you that?

A. That was about the 20th of January; somewhere around that date.

Q. The 20th of January? A. About that date.

Q. That was on the 20th of January, was it?

A. About the 20th of January.

Q. Is that the reason that the letter of January 28th from the Pacific Coast Steel Company was sent

(Testimony of J. W. Chapman.)

to him? A. Yes.

Q. This was a confirmation which he asked for at that time concerning that shipment; is that right?

A. He requested that we furnish him a letter direct from the shipper.

Q. How about the next bookings for March? How does it happen that [88] the Pacific Coast Steel Company claimed that under your letter dated December 28, 1915,—

Mr. HARWOOD.—That is not proper cross-examination; as to what the Pacific Coast Steel Company claimed, how could he know the Pacific Coast Steel Company made a claim of that kind?

The COURT.—This witness has testified he was the booking agent of the Pacific Coast Steel Company—what does he call it?

The WITNESS.—The traffic manager.

The COURT.—The traffic manager of the Pacific Coast Steel Company.

Mr. FRANK.—Q. Answer the question.

A. That was after the contract with us had been repudiated and we had advised the Pacific Coast Steel Company that Mr. Connor would no longer deal with us but wanted to deal with the steel company direct, and the correspondence that took place between the Java Pacific line and the Pacific Coast Steel Company in late February and March, I am not familiar with.

Q. How were they advised that the letter of December 24, 1915, and how did they know that that

(Testimony of J. W. Chapman.)

was a letter making a contract for them and not a contract for you?

A. I advised them of the letter.

Q. You advised them of that? A. Yes.

Mr. HARWOOD.—Q. Of what letter did you advise them?

A. That was the letter that I had written to the Java Pacific.

Mr. FRANK.—Q. Which letter?

A. On the March space.

Q. December 24? A. About that date, I think.

Q. You advised the Pacific Coast Steel Company that was theirs?

A. That we had reserved that space.

Q. For them?

A. And that they could have it for their shipment.

Q. You did not advise them that the letter was on the face of it a letter reserving it for their account, or did you—did you show them the letter?

A. I may have given them a copy of the letter; I [89] am not sure of it.

Q. At that time, up to March 3d, 1916, there had been no confirmation from the Pacific Coast Steel Company to the Java Pacific line of that particular shipment as there had been of the February shipment which I have just referred to, had there?

A. Not to my knowledge.

Q. Then that of March stood exactly in the same place, in the same situation as the April shipment stands to-day did it not, at that time?

Mr. HARWOOD.—I object to that as calling for

(Testimony of J. W. Chapman.)

a conclusion of the witness, immaterial, irrelevant and incompetent.

The COURT.—The objection will be overruled.

To the foregoing ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 22.

Mr. FRANK.—Q. So far as confirmation is concerned, and so far as any advice from you to the Java-Pacific line is concerned, that it was for the Pacific Coast Steel Company and not for you, I mean? A. Upon what date was that?

Q. Up to March; it all dates from December 24, 1915, up to and including March 3d, 1916.

A. I would not say so, no. The letter of January 27th that we wrote to the Java-Pacific line, and their confirmation of that letter—

Q. (Intg.) The letter of January 27th?

A. Yes.

Q. Was a confirmation of which letter?

A. And their confirmation of that letter.

The COURT.—Their confirmation of the letter of January 27th?

Mr. FRANK.—Let us see what the letter of January 27th refers to.

A. There was no reference to the Pacific Coast Steel Company.

Q. Let us see if we have any letter here of January 27th. I do not know what letter you refer to.

The COURT.—He is referring to one of the letters that they rely upon as an entering into of the contract. [90]

(Testimony of J. W. Chapman.)

Mr. FRANK.—Q. What about those letters?

A. It makes no reference to the Pacific Coast Steel Company, but confirms the bookings for Chapman & Thompson.

Q. Now, my question was regarding the relative positions of the March shipment and the February shipment, and your answer is that the March shipment does not stand in the same position, because of the letters of January 27th; is that the idea?

A. Your other question was relative to the April shipment.

The COURT.—No, March.

A. In reference to the March shipment, I am not familiar with any correspondence between the Pacific Coast Steel Company and the Java-Pacific line after the contract of January 27th was repudiated, which was on, I believe, about February 26th.

Q. And you have already told us that this letter was written at your suggestion by the Pacific Steel Company.

Mr. HARWOOD.—I do not think the witness said it was written at his suggestion.

A. This letter of January 28th, addressed to the Java-Pacific line by the Pacific Coast Steel Company and confirming the bookings for February, of 1110 tons, was written by the Steel Company on my request to them advising them that such a letter had been requested by Mr. Connor.

Mr. FRANK.—Q. That is what I understand. Now, that which is confirmed on January 28th is the first shipment which is mentioned in the letter of

(Testimony of J. W. Chapman.)

January 27th, is it not? A. Yes.

Q. And that shows that it was for the Pacific Coast Steel Company, that shipment? A. Yes.

Q. Now, we will take the March shipment, which is confirmed by this letter of March 3d, which you say was in pursuance of your letter of December 24th; that is the second one mentioned in this letter of January 27th, is it not?

A. I am not familiar with the letter of March 3d, written by the steel company. [91]

Q. I will show it to you again, and show you also the letters of which that is a confirmation, so that we will have no misunderstanding about it.

A. The Pacific Coast Steel Company, in writing their letter of March 3d, have connected it with my letter to the Java-Pacific of February 24th.

Q. December 24th, you mean?

A. December 24th. The negotiations between Mr. Connor and the steel company leading up to this letter I know nothing whatever about; I had nothing whatever to do with this.

Q. This is your letter of December 24th referred to, is it not? A. I presume it is.

Q. Don't you know that it is?

A. No; I had nothing whatever to do with it; I presume it is the letter.

Q. Very well. That letter originally was for 400 tons, was it not? A. Yes.

Q. And you, with your initials, changed that to 300 tons? A. Yes.

(Testimony of J. W. Chapman.)

Q. That accounts for the difference, does it not, between 400 tons mentioned in that letter and 300 tons mentioned in this?

A. The main reason for changing that was, I took it personally to the office of the Java-Pacific and Mr. Edwards, in going over it, got out his book and said it was a mistake, it is only 300 tons.

Q. Those are the two letters which form the basis of the second item here, March shipment, 1000 weight tons, rate \$10, per ton of 2000 pounds for bar iron under 30 feet in length, plate iron and structural steel, no piece to exceed 4000 pounds in weight, \$12 per ton of 2000 to Hong Kong and Manila, as qualified by the reply which you have put in evidence, in which, among other things, the Java-Pacific line say, "We confirm what you have written, except that in the month of March we have on our books reserved for you 300 tons weight for iron bars, plate iron and structural steel." Is that not so?

Mr. HARWOOD.—We object to that on the ground that the letter refers to bar iron 20 feet and under in length, whereas the final contract refers to bar iron under 30 feet in length and while this letter does not refer to plate iron and structural steel the [92] contract does, therefore, it shows that this letter did not cover the same matter as is covered by the final contract, and therefore the objection is made that it calls for the conclusion of the witness and asks him to say that it refers to the same matter.

The COURT.—If they do not refer to the same

(Testimony of J. W. Chapman.)

matter, the witness who is familiar with the transaction can say so. A mis-statement of the figures in the letter cannot affect the rights of the party to inquire of the witness on cross-examination what the facts are.

To the foregoing ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 23.

A. I cannot answer with respect to the letter of March 3d, because I had nothing whatever to do with it. The negotiations were not carried on by me, but by Mr. Connor, with the Pacific Coast Steel Company direct.

Mr. FRANK.—Q. At any rate, your statement in your letter of January 27th, concerning the March shipment was based, was it not, upon the agreement contained in the letter of December 2th, which I have exhibited to you.

Mr. HARWOOD.—I object to that on the ground it is immaterial, irrelevant and incompetent, and calling for the conclusions of the witness; the letter speaks for itself.

The COURT.—The objection is overruled.

To the foregoing ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 24.

A. When the letter of January 27th was written we had been advised by the Java-Pacific line that we had 1000 tons of space on the March shipment

(Testimony of J. W. Chapman.)

and not 300 tons as referred to in the letter of December 24th.

Mr. FRANK.—Q. Now, let us see. That is the letter you refer to, isn't it (handing)?

A. Yes; and I had also been advised verbally.

[93]

Q. At any rate here you have a letter on January 22d advising you that your March booking is 1000 tons, haven't you? A. Yes.

Q. And thereupon you wrote the letter of January 27th, including 1000 tons? A. Yes.

Q. And following that the Java-Pacific confirmed it, saying, however, instead of 1000 tons it is 300 tons; is that right? A. On February 12th.

Q. Whenever it was, it was 300 tons? A. Yes.

Q. And thereupon you made the change in the letter of December 24th from 400 to 300 tons; is that right? A. No.

Q. When did you make that change?

A. The change from 400 to 300 tons in the letter of December 24th was made at the time this letter was delivered at the office of the Java-Pacific line, on December 24th.

Q. At any rate, that is the number of tons contracted for and that is the basis, then, upon which you assented to the change in the letter which you call the contract of January 27th, from 1000 tons for March shipment to 300 tons for March shipment, isn't it?

A. We had a great many verbal conversations; I

(Testimony of J. W. Chapman.)

was calling most daily to get the space for March shipment increased.

Q. Answer my question: Isn't that, the change on the face of that letter, the basis upon which you assented to the change in the letters of January 27th and February 12th?

A. I assented to the change in the letter of January 27th because it was an error on the part of Mr. Edwards—Mr. Edwards advised me it was an error on his part in putting down the figures, and asking me if I would not change it to 300 tons, and they would do everything possible to increase it.

Q. Was this letter exhibited to you at the time?

A. No.

Q. Did you consent to their change of 700 tons without any evidence before you that there was an error?

A. I simply took his word that [94] it was an error.

Q. You simply took his word?

A. Yes; I had his letter of January 22d, stating that it was 1000, and sometime in the early part of February, prior to writing their letter of February 12th, he discussed it with me, on two or three occasions.

Q. Now, Mr. Chapman, how did this controversy first arise between you and Mr. Connor, of the Java-Pacific, with whom these contracts were made?

A. The controversy arose when he presented the letter or when we asked Mr. Connor to confirm the

(Testimony of J. W. Chapman.)

booking of 250 tons of automobiles for account of the Studebaker Corporation.

Mr. HARWOOD.—That letter is not in evidence?

Mr. FRANK.—No.

Mr. HARWOOD.—I would like to see that.

Mr. FRANK.—As soon as he identifies it.

The WITNESS.—I did not write this letter myself, and was not present in the office when it was written.

Q. Is that the letter you refer to?

A. Yes, that is the letter.

Q. Now, this letter was written after this conversation which you say you had with Mr. Connor on the floor of the Merchants Exchange Building, in which you denied that you were offering to sell any of this space, was it not?

A. What is the date of that?

Q. February 25. A. Yes.

Q. And upon the presentation of this letter to Mr. Connor—were you present at the time this letter was presented? A. No.

Q. Did you have anything to do with the negotiations? A. With Mr. Connor?

Q. The dispute that arose under this letter—first, Mr. Connor refused to recognize that, did he not?

A. He refused to write a letter, yes.

Q. On the ground that it was not for sale, that it was for the Pacific Coast Steel Company, and you had no right to sell it?

A. He [95] did not state his grounds.

(Testimony of J. W. Chapman.)

Mr. FRANK.—I will offer the letter in evidence, if your Honor please.

Mr. HARWOOD.—It has certain notations in pencil on it. Were those written on there subsequent to the receipt of the letter by the defendant?

Mr. FRANK.—Yes, that is their own memorandum.

Mr. HARWOOD.—That is stipulated to, is it?

Mr. FRANK.—Certainly, that is our own memorandum. (Reading) I ask that that be marked as an exhibit.

Said letter was thereupon marked Defendants' Exhibit "Q," and was the letter bearing date February 25, 1916, a copy of which is set out in Paragraph VI of the plaintiffs' complaint.

Q. That was the split between you, was it?

A. Yes.

Q. That is where the trouble arose? A. Yes.

Q. Why didn't you tell them at that time, Mr. Chapman, that the Pacific Coast Steel Company had refused to take any more space?

A. I did not consider it necessary.

Q. You did not consider it necessary; subsequently, however, after this controversy arose, you went down to the Pacific Coast Steel Company, did you not, to get them to disaffirm your agency for them?

Mr. HARWOOD.—That is objected to as immaterial, irrelevant and incompetent.

The COURT.—The objection will be overruled.

(Testimony of J. W. Chapman.)

To the foregoing ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 25.

A. No, I did not.

Mr. FRANK.—Q. You went down to see them about this controversy, did you not?

A. Mr. Thompson went.

Q. Did you send someone?

A. Mr. Thompson went.

Q. Mr. Thompson went? A. Yes. [96]

Q. As a result from Mr. Thompson's visit down there they gave you a letter under date of March 1, 1916, did they not?

A. I could not say offhand now.

Q. That is the notice that you served upon us, isn't it? A. Yes.

Q. Now, this notice that I show you, Defendant's Exhibit "H," is the notice whereby the Java Pacific line are notified that their claim that you were contracting not as principals but as agents for the Pacific Coast Steel Company is not well founded: isn't that right.

A. I did not have the handling of that and I am not familiar with the terms. That is the purport of the letter; it has got the signature to it.

Mr. HARWOOD.—It speaks for itself.

A. Yes.

Mr. FRANK.—Q. Now, that is the first notice that you ever gave to the Java Pacific Line that the Pacific Coast Steel Company did not want that space, isn't it?

(Testimony of J. W. Chapman.)

A. No, I would not say so; when I stated to the Java Pacific line about the end of January that they understood that all of these bookings were for Chapman & Thompson, I considered that was sufficient notice; the Java-Pacific line understood very clearly.

Q. Never mind what they understood. We will conclude what they understood. That is the conversation you had? A. Yes.

Q. And this is the first direct notice that you gave them of the fact that the Pacific Coast Steel Company were not going to take that space?

Mr. HARWOOD.—I object to that upon the ground he has answered it already.

Mr. FRANK.—Q. Isn't that the first notice that you gave them?

The COURT.—The first specific notice?

A. The first notice in writing; I had given them verbal notice.

Mr. FRANK.—Q. You do not mean to tell us that you had ever told them distinctly and in so many words the Pacific Coast Steel Company [97] was not going to fill on this, but you say you told them that you wanted them to understand these bookings were for yourself, and that you thought was sufficient? A. Yes.

Q. You mean by that you had notified them?

A. Yes.

Redirect Examination.

(In answer to Mr. HARWOOD.)

Q. What if anything did Mr. Connor say to you on the 20th of January as to the shipments for March

(Testimony of J. W. Chapman.)

and April? You testified to a conversation with Mr. Connor on or about the 20th of January over the telephone; what if anything did Mr. Connor say at that time, at that conversation over the phone regarding shipments for March and April—or first, did Mr. Connor phone you or did you phone him?

A. Mr. Connor called me on the phone.

Q. What did he say with reference to letters from firms, or what did he say about March and April shipments?

A. He said, completing his request covering the February bookings, “of course we want similar letters covering shipments direct from the shippers of the cargo.”

Q. Did you have the conversation with Mr. Edwards referred to in this letter of February 25, or did Mr. Thompson have it.

A. I did not have it; Mr. Thompson.

Q. Were you there? A. I was not.

PLAINTIFFS THEREUPON RESTED.

Testimony of F. F. Connor, for Defendants (in Rebuttal.)

F. F. CONNOR, a witness on behalf of defendants was thereupon called in rebuttal by defendants and testified as follows:

(In answer to Mr. FRANK.)

Q. Mr. Connor, what was Mr. Edwards' position?

A. My stenographer.

The COURT.—What was the character of Mr. Edwards' authority in the office there?

Mr. HARWOOD.—We object to that upon the

(Testimony of F. F. Connor.)

ground that it calls for the conclusion of the witness.

The COURT.—The objection is overruled.

To the following ruling the plaintiffs then and there duly excepted:

EXCEPTION NO. 26. [98]

A. He had no authority whatever. He was an employee.

Mr. HARWOOD.—I move to strike out the answer as the conclusion of the witness.

The COURT.—The motion is denied.

To the foregoing ruling the plaintiffs then and there duly excepted:

EXCEPTION NO. 27.

Mr. FRANK.—Q. You have heard Mr. Chapman's testimony to the effect that Mr. Edwards was in Chapman's office in the Fife Building when Mr. Chapman testified that he told Mr. Edwards that these bookings were for Chapman & Thompson. Did Mr. Edwards ever report that to you?

Mr. HARWOOD.—I object to that upon the ground it is immaterial, irrelevant and incompetent.

The COURT.—The objection is overruled.

To the foregoing ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 28.

A. No.

Mr. FRANK.—Q. Did you ever hear of it before.

Mr. HARDWOOD.—I object to that upon the ground that it is immaterial, irrelevant and incompetent.

(Testimony of F. F. Connor.)

The COURT.—The objection is overruled.

To the foregoing ruling the plaintiffs then and there duly excepted.

EXCEPTION NO. 29.

A. No.

Mr. FRANK.—Q. You have also heard the testimony of Mr. Chapman with respect to a conversation you had with him on the floor of the Exchange on or about January 20th. State that conversation in full.

A. The date I think is a mistake; it was near Washington's Birthday. In his testimony I think he referred to it as the 12th of February; I think it was about the day before or after February 22.

Q. February 10 he said. Go on?

A. I met Mr. Chapman and said "Good [99] morning, Chapman, I understand you are offering freight space on our steamers for sale; is that so?" He said, "Why no." I said, "Haven't sold any?" He said, "No." I said, "That is funny, I heard it yesterday afternoon and again this morning on the street." "It is not so." I said, "You understand, Chapman, you cannot sell any space on our steamers; you have not any space on our steamers for sale; all the space we have got has been booked through you for the Pacific Coast Steel Company, and for certain items, commodities; it is good for nothing else."

Q. What did he reply?

A. He said, "I understand that."

(Testimony of F. F. Connor.)

Cross-examination.

(In answer to Mr. HARWOOD.)

Q. Mr. O'Connor, it is a fact, is it not, that in the office of the Java-Pacific, Mr. Edwards conferred with shippers who went into the office for the purpose of booking freight?

A. Conferred with them?

Q. Yes. A. Yes.

Q. Was his desk near the entrance to the office?

A. At the beginning of the period, when we established the agency, and it was located on the third floor, his office was in the first room.

Q. Has he got a room for himself?

A. He had at that time, but we were only there a short period of two or three weeks; then we went downstairs on the ground floor, and his office was in my room.

Q. Who made the entries in the books showing the reservations?

A. Part of them were made by Fred Roepke and part by Mr. Edwards.

Q. Were they made in handwriting?

A. They were made by hand, if that is what you mean.

Q. What was the other gentleman's name.

A. Ropeke, an employee of the firm.

Q. What was his position?

A. He was a clerk of the firm of J. D. Spreckels & Bros. Company.

Q. What did he do?

A. Collected cash at the window, when bills of lad-

(Testimony of F. F. Connor.)

ing were signed, collected state toll and other items of collections [100] on inward and outward freight.

Q. If a shipper should come into the office of J. D. Spreckels & Bros. Company for the purpose of booking freight on a steamer, whom would he meet first? Whom was he referred to?

A. At that time he would be referred to me.

Q. What time do you mean?

A. At the time that these reservations were made of which we are talking.

Q. Before that time who would he be referred to?

A. Before that time there was no office; we did not start until the first of December.

Q. You started the Java-Pacific about the first of December? A. Yes.

Q. Is it not a fact that many shippers, in going into that office, book their freight through Mr. Edwards?

A. Mr. Edwards, acting as my stenographer, did the work of making a memorandum from time to time, waiting on people, who came to the office while I was out of the office; I will say that in December I was in the employ of the Pacific Mail Steamship Company, did not leave them until the end of December, but our preliminary work for engaging space for the first steamer of the Java-Pacific commenced in the Spreckels office about the 24th of November; Mr. Edwards came to me as my stenographer on the first of December, and most of my time during December was spent at the Pacific

(Testimony of F. F. Connor.)

Mail Office, and about 21½ hours a day in the Java-Pacific office, so that Mr. Edwards did the things in that office that I told him to do, wrote the letters which I dictated while I was in the office, replying to correspondence, and, naturally, in my absence from that office people who came to the office to transact business on account of the Java-Pacific dealt with Mr. Edwards; but regarding authority to book freight, that was up to me.

Q. This letter of January 22, where this alleged mistake was made regarding the tonnage for March, who dictated that letter?

A. The one you have in your hand? [101]

Q. Yes. A. What is the number of it.

Q. No. 255. A. Mr. Edwards.

Q. Who dictated it?

A. It was not dictated, simply written on the machine direct.

Q. Who wrote it. A. He wrote it.

Mr. FRANK.—That is, he wrote it as a stenographer, and you signed the letter—it was passed over to you for your signature?

A. My signature, yes.

The foregoing was all of the testimony and evidence introduced at the trial of said action.

Thereupon counsel for the defendants requested the Court to instruct the jury to find a verdict in favor of the defendants. After argument by counsel for plaintiffs and by counsel for defendants, the Court instructed the jury to find a verdict for the defendants.

To the action of the Court in so instructing the jury the plaintiffs then and there duly excepted.

EXCEPTION NO. 30.

Thereupon pursuant to instructions of the Court, the jury returned a verdict in favor of the defendants.

The plaintiffs duly excepted to said verdict.

EXCEPTION NO. 31.

Thereafter, judgment in pursuance of said verdict was entered by the clerk of the court.

The plaintiffs duly excepted to said judgment.

EXCEPTION NO. 32.

Assignments of Error.

The plaintiffs now assign as error the following, to wit:

**ERRORS OF LAW OCCURRING AT THE
TRIAL AND EXCEPTED TO BY THE
PLAINTIFFS.**

Error No. 1. The Court erred in overruling plaintiffs' objection to introduction of letter in evidence as specifically appears [102] in Exception No 1 hereinabove.

Error No. 2. The Court erred in overruling plaintiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 2 hereinabove.

Error No. 3. The Court erred in overruling plaintiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 3 hereinabove.

Error No. 4. The Court erred in overruling plain-

tiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 4 hereinabove.

Error No. 5. The Court erred in overruling plaintiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 5 hereinabove.

Error No. 6. The Court erred in overruling plaintiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 6 hereinabove.

Error No. 7. The Court erred in overruling plaintiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 7 hereinabove.

Error No. 8. The Court erred in overruling plaintiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 8 hereinabove.

Error No. 9. The Court erred in overruling plaintiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 9 hereinabove.

Error No. 10. The Court erred in overruling plaintiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 10 hereinabove.

Error No. 11. The Court erred in overruling plaintiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 11 hereinabove.

Error No. 12. The Court erred in overruling

plaintiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 12 hereinabove.

Error No. 13. The Court erred in overruling plaintiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 13 hereinabove.

Error No. 14. The Court erred in overruling plaintiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 14 hereinabove.

Error No. 15. The Court erred in overruling plaintiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 15 hereinabove.

Error No. 16. The Court erred in overruling plaintiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 16 hereinabove. [103]

Error No. 17. The Court erred in overruling plaintiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 17 hereinabove.

Error No. 18. The Court erred in overruling plaintiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 18 hereinabove.

Error No. 19. The Court erred in overruling plaintiffs' objection to introduction of letter in evidence as specifically appears in Exception No. 19 hereinabove.

Error No. 20. The Court erred in overruling the

objection of plaintiffs to the question asked the witness F. F. Connor as specifically appears in Exception No. 20 hereinabove.

Error No. 21. The Court erred in overruling the objection to the question asked the witness Chapman as specifically appears in Exception No. 21 hereinabove.

Error No. 22. The Court erred in overruling the objection to the question asked the witness Chapman as specifically appears in Exception No. 22 hereinabove.

Error No. 23. The Court erred in overrruling the objection to the question asked the witness Chapman as specifically appears in Exception No. 23 hereinabove.

Error No. 24. The Court erred in overruling the objection to the question asked the witness Chapman as specifically appears in Exception No. 24 hereinabove.

Error No 25. The Court erred in overruling the objection to the question asked the witness Chapman as specifically appears in Exception No. 25 hereinabove.

Error No. 26. The Court erred in overruling the objection to the question asked the witness Connor as specifically appears in Exception No. 26 hereinabove.

Error No. 27. The Court erred in denying plaintiffs' motion to strike out certain testimony as specifically appears in Exception No. 27 hereinabove.

Error No. 28. The Court erred in overruling the objection to the question asked the witness Connor as

specifically appears in Exception No. 28 herein-above.

Error No. 29. The Court erred in overruling the objection to the question asked the witness Connor as specifically appears in Exception No. 29 herein-above.

Error No. 30. The Court erred in instructing the jury to find a verdict for the defendants as specifically appears in Exception No. 30.

Error No. 31. The jury erred in returning a verdict in favor of the defendants as specifically appears in Exception No. 31.

Error No. 32. The Court erred in entering judgment for defendants in pursuance of said verdict as specifically appears in Exception No. 32. [104]

And now within the time allowed by law and the stipulation of the parties the plaintiffs present this their bill of exceptions to be used upon a writ of error to review the judgment herein, and pray that the same may be settled and allowed as true and correct.

Dated December 26th, 1916.

ALFRED J. HARWOOD,
EUSTACE CULLINAN,
Attorneys for Plaintiffs.

Stipulation.

It is hereby stipulated and agreed that the foregoing Bill of Exceptions is full, true and correct and may be settled and allowed by the above entitled Court.

Dated Dec. 29, 1916.

ALFRED J. HARWOOD,
EUSTACE CULLINAN,
Attorneys for Plaintiffs.
NATHAN N. FRANK,
IRVING H. FRANK,
Attorneys for Defendants.

Order.

The Court being willing to preserve the record in order that its rulings may be reviewed for error, if any there be, hereby certifies that the foregoing Bill of Exceptions is full, true and correct and that it contains all the evidence offered or admitted upon the trial of said cause, together with the rulings of the Court thereon and the rulings of the Court in admitting or excluding testimony at said trial, and the exceptions taken to the rulings of the Court, and the exceptions allowed thereon;

IT IS ORDERED that said Bill of Exceptions is hereby certified as full, true and correct.

December 29, 1916.

WM. C. VAN FLEET,
Judge of the United States District Court.

[Endorsed]: Filed Dec. 29, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [105]

*In the District Court of the United States, in and
for the Northern District of California, Division Two.*

No. 15,980.

J. W. CHAPMAN and P. R. THOMPSON, Co-
partners Doing Business Under the Firm
Name of CHAPMAN & THOMPSON,
Plaintiffs,

vs.

JAVA PACIFIC LINE, a Corporation, STOOM-
VAARTMAATSCHAPPY NEDERLAND,
a Corporation, ROTTERDAMSCH E
LLOYD, a Corporation, JAVA-CHINA-
JAPAN LYN, a Corporation, BLACK COM-
PANY, a Corporation, and WHITE COM-
PANY, a Corporation,

Defendants.

Petition for Writ of Error.

To the Honorable WILLIAM C. VAN FLEET,
Judge of the Above-entitled Court, and to the
Judge or Judges of Said District Court:

Now comes the above-named plaintiffs, J. W. Chapman and P. R. Thompson, copartners doing business under the firm name of Chapman & Thompson, by Alfred J. Harwood and Eustace Cullinan, their attorneys, and say:

That on or about the 26th day of September, 1916, this Court entered a judgment herein, in favor of defendants and against plaintiffs, in which judgment and the proceedings prior thereunto in this cause cer-

tain errors were committed to the prejudice of the plaintiffs, all of which will more in detail appear from the assignment of errors, which is filed with this petition:

WHEREFORE, plaintiffs pray that a writ of error may issue in their behalf to the United States Circuit Court of Appeals for the Ninth Circuit for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 29th day of December, 1916.

ALFRED J. HARWOOD,

EUSTACE CULLINAN,

Attorneys for Plaintiffs.

[Endorsed]: Filed Dec. 29, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [106]

In the District Court of the United States, in and for the Northern District of California, Division Two.

No. 15,980.

J. W. CHAPMAN and P. R. THOMPSON, Co-partners Doing Business Under the Firm Name of CHAPMAN & THOMPSON,
Plaintiffs,

vs.

JAVA PACIFIC LINE, a Corporation, STOOM-
VAARTMAATSCHAPPY NEDERLAND,

a Corporation, R O T T E R D A M S C H E
LLOYD, a Corporation, JAVA-CHINA-
JAPAN LYN, a Corporation, BLACK COM-
PANY, a Corporation, and WHITE COM-
PANY, a Corporation,

Defendants.

Assignment of Errors.

Now come the above-named plaintiffs, J. W. Chapman and P. R. Thompson, copartners doing business under the firm name of Chapman & Thompson, and in connection with their petition for a writ of error, make the following assignment of errors, which they aver were committed by the Court and Jury in this case, and upon the trial thereof, and in the rendition of the judgment against plaintiffs appearing of record herein, to wit:

(1) The Court erred in admitting in evidence over plaintiffs' objection the letter dated December 2d, 1915, from defendants to plaintiffs, as appears in Exception No. 1 in the Bill of Exceptions herein, the objection of plaintiffs to said letter being that it was irrelevant, immaterial and incompetent, and that its admission in evidence attempted to vary a written contract between the parties, and on the further ground that it was merged in the final written contract set forth in the complaint. Said letter so admitted in evidence over said objection of plaintiffs was and is in words and figures following, to wit:

[107]

“JAVA-PACIFIC LINE.

San Francisco, Cal., Dec. 2, 1915.

Messrs. Chapman & Thompson,
100 California St.,
San Francisco.

Gentlemen:

Referring to interview with Mr. Chapman on Nov. 27:

We understand that you have booked firm 360 tons STEEL from the Pacific Coast Steel Co., destined Hongkong, on our SS. “Arakan,” scheduled to *said* from San Francisco on or about February 19th, 1916.

Also, that we gave you option to ship an aggregate of 750 tons, destined Hongkong, Manila and Java ports of call. This option to expire one week from Nov. 27th.

In order that we may be sure there is no misunderstanding, will you kindly confirm and also advise by December 4th, concerning the option, which expires that date.

Yours very truly,
J. D. SPRECKELS & BROS. CO.,
F. F. C.

C-8-E

General Agents.”

(2) The Court erred in overruling plaintiffs' objection to the admission in evidence of letter from J. W. Chapman to the defendants, dated December 3d, 1915, as appears in Exception No. 2 in the Bill of Exceptions herein, said objection being made upon the ground that said letter was irrelevant, incompetent and immaterial, and an attempt to vary by parol

or extrinsic evidence the contract formed by the two letters set forth in the complaint. Said letter so admitted in evidence over the objection of plaintiffs was and is in words and figures following, to wit:

“CHAPMAN and THOMPSON

San Francisco, December 3d, 1915.

J. D. Spreckels & Bro., Co.,

General Agents,

Java-Pacific Line,

60 California Street,

San Francisco, Cal.

Attention Mr. Connors.

Gentlemen:

In re Your letter Dec. 2d—

We have booked firm 360 tons Steel Bars for account of Pacific Coast Steel Co., destined Hong Kong for shipment on S. S. “Arakan” or substitute scheduled to sail from San Francisco on or about Feb. 19th, 1916; freight Rate from San Francisco to Hong Kong \$8.00 per ton of 2000 lbs.

You have also given us option for 750 ton steel Bars in addition to the above, for shipment from San Francisco to Hong Kong and Manila or Java, Ports of call our option. Freight to Hong Kong and Manila \$8.00 per ton of 2000 lbs; Java Ports \$10.00 per ton of 2000 lbs.

This option expires at 5 P. M. December 6th, 1915.

Yours very truly,

JWC/JEC.

J. W. CHAPMAN.

(3) The Court erred in overruling plaintiffs’ objection to [108] the admission in evidence of letter from J. W. Chapman to Messrs. J. D. Spreck-

els & Bros. Co., dated December 9th, 1915, as appears in Exception No. 3 in the Bill of Exceptions herein said objection being made upon the ground that said letter was irrelevant, incompetent and immaterial, and an attempt to vary by parol or extrinsic evidence the contract formed by the two letters set forth in the complaint. Said letter so admitted in evidence over the objection of plaintiffs was and is in words and figures following, to wit:

“CHAPMAN and THOMPSON.

San Francisco, Dec. 9th, 1915.

Messrs. J. D. Spreckels Bros. & Co.,

California & Davis Streets,

City.

ATTENTION MR. CONNORS.

Gentlemen:

Referring to our letter of December 3d, also a telephone conversation, we desire to book firm the 750 tons of space for steel bars on which you had given us an option for shipment on your S. S. “*ARAKAN*” or substitute, scheduled to sail from San Francisco on or about February 19, 1916; freight rate from San Francisco to Hong Kong and Manila \$8.00 per ton, and to Java ports of call \$10.00 per ton of 2,000 lbs. We have the option of shipping all or any part of this tonnage to either Hongkong, Manila or any of the Java ports.

Will you please acknowledge receipt,

Yours very truly,

J. W. CHAPMAN.”

JWC/KW.

(4) The Court erred in overruling plaintiffs' objection to the admission in evidence of letter from J. D. Spreckels & Bros. Co. to J. W. Chapman, dated December 10th, 1915, as appears in Exception No. 4 in the Bill of Exceptions herein, said objection being made upon the ground that said letter was irrelevant, incompetent and immaterial, and an attempt to vary by parol or extrinsic evidence the contract formed by the two letters set forth in the complaint. Said letter so admitted in evidence over the objection of plaintiffs was and is in words and figures following, to wit:

“JAVA-PACIFIC LINE.

San Francisco, Cal., Dec. 10, 1915.

Mr. J. W. Chapman,
100 California St.,
San Francisco.

Dear Sir:—

Replying to your letter of December 9th: [109]

I note that you book firm 750 tons steel bars by our SS. “*ARAKAN*,” to *said* from San Francisco about February 19th, 1916, to Hong Kong and Manila, at a rate of 40¢ per 100 lbs., and to Java ports of call at 50¢ per 100 lbs. All of which we confirm.

Please give us complete details of this shipment as early as possible.

Yours very truly,

J. D. SPRECKELS & BROS. CO.,

General Agents.

Per pro F. F. C.

(5) The Court erred in overruling the plaintiffs' objection to the introduction in evidence of letter dated January 28th, 1916, from Pacific Coast Steel Co. to J. D. Spreckels & Bros. Co., as appears in Exception No. 5 in the Bill of Exceptions herein, said objection being upon the ground that said letter was irrelevant, incompetent and immaterial, and an attempt to vary by parol or extrinsic evidence the contents of a written contract formed by the two letters set forth in the complaint, and upon the further ground that it was correspondence between one of the parties to this action and another person who is not a party to this action. Said letter so admitted in evidence over the objection of plaintiffs was and is in words and figures following, to wit:

“PACIFIC COAST STEEL COMPANY.

San Francisco, January 28, 1916.

J. D. Spreckels Bros. Co.,

General Agents Java-Pacific Line,

San Francisco, California.

Gentlemen:

This will confirm firm booking for 1110 tons of 2000# each, of bar iron and steel, under 30 feet in length, for shipment from San Francisco to Hong-kong and Manila on the SS. “*ARAKAN*” scheduled to *said* February 19.

This is in accordance with the booking made by Chapman & Thompson.

Yours very truly,

PACIFIC COAST STEEL COMPANY.

ED. R. MORRISON,

For Foreign Sales Manager.”

ERM. NLH.

(6) The Court erred in admitting in evidence over plaintiffs' objection letter dated December 24, 1915, from J. W. Chapman to J. D. Spreckels & Bros. Co., as appears in Exception No. 6 in the Bill of Exceptions herein, said objection being made upon the ground that said letter was immaterial, irrelevant and incompetent, and an attempt to vary by parol or extrinsic evidence the contents or terms of a valid written contract set forth in the complaint. Said [110] letter so admitted in evidence over the objection of plaintiffs was and is in words and figures following, to wit:

“CHAPMAN and THOMPSON.

San Francisco, Dec. 24th, 1915.

SUBJECT: Booking and request for option for space account Pacific Coast Steel Company.

Messrs. J. D. Spreckels & Bros. Co.,

California & Davis Streets,

City.

Gentlemen:

This will confirm conversation with your Mr. Ed-J. W. C. wards wherein we have booked firm for account of the Pacific Coast Steel Company 300 tons of bar steel, 20 feet and under in length, for shipment of your steamer “TJISONDARI,” or substitute, scheduled to *said* about March 23d for Hong-kong or Manila. Freight rate \$10.00 per ton of 2,000 lbs.

In line with our conversation, we desire all of the additional space we can secure on this steamer up to 1,000 tons, and we trust you will be able to give us the additional space.

We wish to call your attention to the fact that our steel is manufactured at San Francisco, and our only opportunity of shipping is via the lines sailing from this port, and for this reason we feel that we should be given preference over the Eastern Manufacturers, as they only ship from the port of San Francisco when they cannot secure space through the Atlantic Seaboard ports.

Yours very truly,

J. W. CHAPMAN."

JWC/KW.

(7) The Court erred in overruling the plaintiffs' objection to the introduction in evidence of a letter dated March 3, 1916 from Pacific Coast Steel Company to J. D. Spreckels & Bros. Company, as appears in Exception No. 7 in the Bill of Exceptions herein, said objection being made upon the ground that said letter was immaterial, irrelevant and incompetent, and an attempt to vary by parol or extrinsic evidence the contents of a contract set forth in the complaint, and upon the further ground that it was not a part of the correspondence between the parties to this action, and upon the further ground that it was a letter written after the breach of contract counted upon in the complaint. Said letter so admitted in evidence over the objection of plaintiffs was and is in words and figures following, to wit:

162 *J. W. Chapman and P. R. Thompson*

“PACIFIC COAST STEEL COMPANY

March 3, 1916.

J. D. Spreckels & Bros. Company,
General Agents, Java Pacific Line,
City.

Dear Sirs:

Referring to conversation during the recent visit of your [111] Mr. Connor with regard to our letter of March First to Messrs. Chapman & Thompson, beg to refer you to letter dated Dec. 24, 1915, from J. W. Chapman to your Company, booking for our account of 400 tons of bar steel twenty feet and under in lengths for shipment on your steamer “TJIS-ONDARI,” scheduled to sail about March 23d, for Hong Kong and Manila. Under this letter we are entitled to ship this 400 tons in March.

This material is already rolled and we would thank you to advise us date same will be accepted at the boat. Chapman & Thompson offered us space on April and May sailings, but same was declined by us. Our letter of March First to Chapman & Thompson does not refer to booking per the above mentioned letter of December 24th.

Yours very truly,

PACIFIC COAST STEEL COMPANY,

By E. M. WILSON,

President.”

EMW/B.

The Court erred in overruling plaintiffs’ objection to the introduction in evidence of notice from the plaintiffs to Java-Pacific Line and J. D. Spreckels & Bros. Company, dated March 14th, 1916, as appears

in Exception No. 8 in the Bill of Exceptions herein, said Exception being made upon the ground that said notice was immaterial, irrelevant and incompetent, and an attempt to vary by parol or extrinsic evidence the contents of the contract set forth in the complaint, and upon the further ground that it was written after the breach of contract counted upon and after the complaint herein was filed. Said notice so admitted in evidence over said objection of plaintiffs was and is in words and figures following, to wit:

“NOTICE.

To Java-Pacific Line and to John D. Spreckels & Bros. Company, its General Agents.

On the first day of March, 1916, the undersigned caused to be exhibited to your attorney, Nathan H. Frank, Esq., a letter bearing date to 1st of March, 1916, signed by Pacific Coast Steel Company, and addressed to the undersigned. Said letter was and is as follows, to wit:

‘Pacific Coast Steel Company.

San Francisco, Cal., March 1, 1916.

Messrs. Chapman & Thompson,
Fife Building,
San Francisco, California.

Dear Sirs:

We note your statement to the effect that the Java Pacific Line claims that your contract with them for space on their steamers sailing for Hong Kong and Manila is not a contract with you as principals, but only as agents for us. This claim is not founded in fact. Under our employment of you as traffic

managers we expected that you would allow us to use such space as you had available and we desired, but the contract which you have with that line for space was not made by you as our agents and we are not your principals in the matter. [112]

Yours very truly,

PACIFIC COAST STEEL COMPANY.

By E. M. WILSON,
President.'

Dated March 14th, 1916.

J. W. CHAPMAN,
P. R. THOMPSON,

Copartners Doing Business Under the Firm Name of
Chapman & Thompson."

(9) The Court erred in overruling the plaintiffs' objection to the introduction in evidence of a letter dated December 24th, 1915, from J. W. Chapman to J. D. Spreckels & Bros. Co., as appears in Exception No. 9 in the Bill of Exceptions herein, said objection being made upon the ground that said letter was irrelevant, immaterial and incompetent, and an attempt to vary by parol or extrinsic evidence the contents of the contract set forth in the complaint. Said letter so admitted in evidence over said objection of plaintiffs was and is in words and figures following, to wit:

“CHAPMAN and THOMPSON.

San Francisco, Dec. 24th, 1915.

SUBJECT: Option account Pacific Coast Steel Company.

Messrs. J. D. Spreckels & Bros. Co.,

Agents, Java-Pacific Line,

Davis & California Sts.,

City.

Gentlemen:

This will confirm conversation with your Mr. Edwards, wherein you have given us option for space good until 5 P. M., December 28th, for 750 tons bar iron, 20 feet and under in length, for shipment from San Francisco to Hongkong or Manila on your steamer “Karlmoen,” or substitute, scheduled to sail about April 22d.

Any tonnage booked under this option to be at the rate prevailing for this steamer, and we trust you will quote us definite rate at your earliest convenience.

Please acknowledge receipt.

Yours very truly,

J. W. CHAPMAN.”

JWC/KW.

(10) The Court erred in overruling the plaintiffs’ objection to the introduction in evidence of a letter dated December 24th, 1915, from J. W. Chapman to J. D. Spreckels & Bros. Co., as appears in Exception No. 10 in the Bill of Exceptions herein, said objection being made upon the ground that said letter was irrelevant, immaterial and incompetent, and an attempt to vary by parol or extrinsic evidence

the contents of the contract set forth in the complaint. [113]

Said letter so admitted in evidence over said objection of plaintiffs was and is in words and figures following, to wit:

“CHAPMAN and THOMPSON.

San Francisco, Dec. 24th, 1915.

SUBJECT: Option account Pacific Coast Steel Company.

Messrs. J. D. Spreckels & Bros. Co.,

Davis & California Sts.,

City.

Gentlemen:

Referring to our letter of to-day covering option for space for 750 tons on your steamer scheduled to sail about April 22d for Hongkong and Manila.

We would like to have option for 250 tons additional, bringing the total up to 1,000 tons. Will you please advise if you can grant us this additional option.

Yours very truly,

J. W. CHAPMAN.”

JWC/KW.

(11) The Court erred in overruling the plaintiffs’ objection to the introduction in evidence of a letter dated December 30th, 1915, from plaintiffs to J. D. Spreckels & Bros. Co., as appears in Exception No. 11 in the Bill of Exceptions herein, said objection being made upon the ground that said letter was irrelevant, immaterial and incompetent, and an attempt to vary by parol or extrinsic evidence the contents of the contract set forth in the complaint.

Said letter so admitted in evidence over said objection of plaintiffs was and is in words and figures following, to wit:

“CHAPMAN and THOMPSON.

San Francisco, Dec. 30, 1915.

Subject: April space on account PACIFIC COAST
STEEL CO.

J. D. Spreckels & Bros.,

Agts. Java Pacific Line,

San Francisco, Cal.

Gentlemen:

This will confirm conversation with your Mr. Edwards, wherein we have booked firm space for one thousand (1000) tons bars iron, twenty feet and under in length, for shipment from San Francisco to Hong Kong or Manila, on your steamer “KARIMOEN” or substitute, scheduled to sail about April 22nd, rate to beat the prevailing rate for this steamer, which we understand will be announced by you about January 20th.

Please acknowledge receipt.

Yours very truly,

CHAPMAN & THOMPSON,

By J. W. CHAPMAN.”

JWC/FM.

(12) The Court erred in overruling the plaintiffs’ objection to the introduction in evidence of a letter dated December 24th, [114] 1915, from J. W. Chapman, to J. D. Spreckels & Bros. Co., as appears in Exception No. 12 in the Bill of Exceptions herein, said objection being made upon the ground that said letter was irrelevant, immaterial and in-

competent, and an attempt to vary by parol or extrinsic evidence the contents of the contract set forth in the complaint. Said letter so admitted in evidence over said objection of plaintiffs was and is in words and figures following, to wit:

“CHAPMAN and THOMPSON.

San Francisco, Dec. 24th, 1915.

Subject: Option Account Pacific Coast Steel Company.

Messrs. J. D. Spreckels & Bros. Co.,

Agents, Java-Pacific Line,

Davis & California Sts.,

City.

Gentlemen:

This will confirm conversation with your Mr. Edwards wherein you have given us option for space good until 5 P. M., December 28th, for 1000 tons bar iron, 20 feet and under in length, for shipment from San Francisco to Hongkong or Manila on your steamer “TJIKENBANG,” or substitute, schedule to sail about May 22nd.

Any tonnage booked under this option to be at the rate prevailing for this steamer, and we trust you will quote us definite rate at your earliest convenience.

Please acknowledge receipt.

Yours very truly,

J. W. CHAPMAN.”

JWC/KW.

(13) The Court erred in overruling plaintiffs’ objection to the introduction in evidence of a letter dated December 30th, 1915, from plaintiffs to J. D.

Spreckels & Bros. Co., as appears in Exception No. 13 in the Bill of Exceptions herein, said objection being made upon the ground that said letter was irrelevant, immaterial and incompetent, and an attempt to vary by parol or extrinsic evidence the contents of the contract set forth in the complaint. Said letter so admitted in evidence over said objection of plaintiffs was and is in words and figures following, to wit:

“CHAPMAN and THOMPSON.

San Francisco, December 30, 1915.

Subject: May option on account Pacific Coast Steel Co.

J. D. Spreckels & Bros. Co.,
Agts. Java-Pacific Line,
City.

Gentlemen:

Referring to our letter of December 24th regarding the [115] option for space for one thousand tons of bar iron, twenty feet and under in length, for shipment from San Francisco to Hong Kong or Manila, on your steamer “Tjikenbang” or substitute, scheduled to sail about May 22nd. In accordance with an arrangement with your Mr. Edwards, this option has been extended to noon, January 3, 1916.

Please confirm.

Very truly yours,

CHAPMAN and THOMPSON.

By J. W. CHAPMAN.”.

JWC/F. M.

(14) The Court erred in overruling plaintiffs’ objection to the introduction in evidence of a letter

dated January 10th, 1916, from plaintiffs to J. D. Spreckels & Bros. Co., as appears in Exception No. 14 in the Bill of Exceptions herein, said objection being made upon the ground that said letter was irrelevant, immaterial and incompetent, and an attempt to vary by parol or extrinsic evidence the contents of the contract set forth in the complaint. Said letter so admitted in evidence over said objection of plaintiffs was and is in words and figures following, to wit:

“CHAPMAN and THOMPSON,
San Francisco, Jan. 10, 1916.

J. D. Spreckels & Bros. Co.,
Agts. Java-Pacific Line,
California and Davis Sts.,
City.

Gentlemen:

This will confirm conversation with your Mr. Edwards, wherein we have made firm booking for space for one thousand (1000) tons of bar steel, twenty feet and under in length for account Pacific Coast Steel Co., for shipment from San Francisco to Hong Kong or Manila, on your steamer “TJIKE-BANG,” or substitute, scheduled to sail about May 22nd.

Freight rate to be at the prevailing rate for this steamer which we understand will be announced by you in February.

Please acknowledge receipt.

Yours very truly,
CHAPMAN & THOMPSON,
By J. W. CHAPMAN.”

JWC/FM.

(15) The Court erred in overruling the plaintiffs' objection to introduction in evidence of letter from J. D. Spreckels & Bros. Company to plaintiffs, dated February 29th, 1916, as appears in Exception No. 15 in the Bill of Exceptions herein, said objection being made upon the ground that it was irrelevant, immaterial and incompetent, and a self-serving declaration. Said letter so admitted in evidence over said objection of plaintiffs was and is in words and figures following, to wit: [116]

“JAVA PACIFIC LINE.

San Francisco, Cal., Feb. 29, 1916.

Messrs. Chapman & Thompson,

Fife Building,

San Francisco.

Gentlemen:

Referring to our letter of Feb. 26th regarding space reservations on our Java-Pacific Line Steamers:

When you applied to us on Nov. 27th, 1915 for space, you claimed to represent the Pacific Coast Steel Co., and we booked various quantities of steel for their account upon your requests. Each of your written requests state thereon that such space or options were for account of the Pacific Coast Steel Co.

Your claim that the contract for space is for your account is not well founded, and your attempt to sell the same is a fraud upon us. That is our real reason for cancelling your reservations, and we only assigned the reasons mentioned in our letter of Feb. 26th because we desired to close the matter with as

little friction as possible. Since you have placed the matter in the hands of your lawyer, it becomes proper and necessary that the real issue between us shall be properly stated.

We therefore now advise you that all further dealings by us in the matter shall be with your principal, the Pacific Coast Steel Co., direct.

Yours very truly,

J. D. SPRECKELS & BROS. COMPANY,
General Agents.
FRED F. CONNOR,
Traffic Manager."

C-470-E.

(16) The Court erred in overruling plaintiffs' objection to the introduction in evidence of letter from Alfred J. Harwood to J. D. Spreckels & Bros. Company, dated February 28, 1916, as appears in Exception No. 16 of the Bill of Exceptions herein, said objection being made upon the ground that said letter was irrelevant, immaterial and incompetent, and written after the breach of contract and in relation to a compromise or adjustment between the parties. Said letter so admitted in evidence over said objection of plaintiffs was and is in words and figures following, to wit:

“ALFRED J. HARWOOD,

Law Offices.

San Francisco, California.

February Twenty-eighth, Nineteen Sixteen.

Messrs. J. D. Spreckels & Bros. Company,

General Agents, Java-Pacific Line,

San Francisco, California.

Dear Sirs:

Messrs. Chapman & Thompson have consulted me with reference to their contract for space on your steamships sailing in March and April.

Chapman & Thompson have a contract in writing with you under which you are obliged to furnish them with 300 tons weight space for March shipment and 1,000 tons weight space for April shipment. This contract is evidenced by their letter of January [117] 27, 1916, and your letter of February 12, 1916. The rates are specified in the contract.

By their letter of the 25th instant they sought to modify their contract with you so as to permit them to ship 250 tons measurement in April, deducting this amount from the booking of 1,000 tons weight space for April, as per contract.

In your letter of the 26th instant you state in reply to their letter of the 25th instant: ‘In going over our record of the bookings for March and April, we find that the steamers have been overbooked, and we are therefore obliged to say that we will be unable to accept any freight from you on our March and April steamers.’

I have advised my clients that the letter is a clear

repudiation of your contract on your part, which constitutes a breach and renders you and your principal liable for all damages which Chapman and Thompson may sustain by reason of your refusal to perform.

Relying upon their contract with you, Chapman & Thompson have already contracted for part of the space covered thereby. Chapman & Thompson are prepared to use the 300 tons of space reserved for March. If you persist in your repudiation of your contract they will be obliged to pay from \$40 to \$50 per ton or from \$12,000 to \$15,000 for this space, which you agreed to furnish for \$3,000. You will be liable in damages for the difference. Part of the 1,000 tons for April shipment has been contracted for by Chapman & Thompson at from \$40 to \$50 per ton, and they are now in a position to contract for the balance at the same figures. Your repudiation of your contract will render you liable to Chapman & Thompson for damages amounting to between \$15,000 and \$25,000.

Chapman & Thompson have bound themselves in writing to deliver a part of this 1,000 tons of space and they will be liable in damages to the parties with whom they have contracted if through your breach of your contract they are unable to comply with their contracts. In addition to being liable for the loss of profits sustained by Chapman & Thompson, you and your principal will also be liable to them for all damages which these parties may recover, including, in my opinion, the cost and expense of defending any suits which these parties may prosecute.

Furthermore, it may be impossible to obtain this space at all in which event you will be liable for all damages resulting from liability to make shipments during the months specified in the contract.

My clients wish to avoid litigation in this matter and hereby give you the opportunity of withdrawing your repudiation of your contract.

Unless they receive from you before 4 P. M. to-day a letter stating that you have withdrawn your repudiation they will treat the contract as repudiated by you and will be governed accordingly.

Very truly yours,
ALFRED J. HARWOOD."

AJH.MS.

(17) The Court erred in overruling plaintiffs' objection to the introduction in evidence of letter from Nathan H. Frank to Alfred J. Harwood, dated February 29, 1916, as appears in Exception No. 17, in the Bill of Exceptions herein, said objection being made upon the ground that said letter was irrelevant, immaterial and incompetent, written after the breach of contract, and in relation to a compromise or adjustment between the parties. Said letter so admitted in evidence over said objection of plaintiffs [118] was and is in words and figures following, to wit:

“NATHAN H. FRANK,

IRVING H. FRANK,

Attorneys at Law.

San Francisco, Cal., February 29, 1916.

Alfred J. Harwood, Esq.,

Attorney at law,

Kohl Building,

San Francisco, Calif.

Dear Sir:

In re: Claim of Chapman & Thompson vs. Java
Pacific Line.

Your letter of the 28th inst., respecting the above matter, has been submitted to me for reply. Feeling that, with all of the facts before you, you would be inclined to change your views regarding the liability of the Java Pacific Line under said contract, I take the liberty of advising you that the contract therein referred to was not a contract with Chapman & Thompson as principals, but only as agents for the Pacific Coast Steel Co., and that the correspondence to which you refer in your said letter is only a part of the correspondence touching said matter. We suggest that you call upon Messrs. Chapman & Thompson for the correspondence that preceded said letters of January 27th and February 12th, in which you will find that my statement regarding the principal in said contract will be verified.

Under the circumstances, Messrs. Chapman & Thompson had no space on any of the ships, and hence can suffer no damage by being refused such space. So far as concerns the Pacific Coast Steel Co., the matter will be taken up with them directly.

We feel certain that when you thoroughly understand the circumstances connected with this transaction, you will advise your clients that they have no cause of action in the premises.

Very truly,

Yours, &c.,

NATHAN H. FRANK.”

(18) The Court erred in overruling plaintiffs’ objection to the introduction in evidence of letter from Alfred J. Harwood to Nathan H. Frank, dated March 1st, 1916, as appears in Exception No. 18, in the Bill of Exceptions herein, said objection being made upon the ground that said letter was irrelevant, immaterial and incompetent, written after the breach of contract, and in relation to a compromise or adjustment between the parties. Said letter so admitted in evidence over the objection of plaintiffs was and is in words and figures following, to wit:

“ALFRED J. HARWOOD,

Law Offices.

San Francisco, March First

Nineteen Sixteen

Nathan H. Frank, Esq.,

Attorney at Law,

1215 Merchants Exchange Building,

San Francisco, California.

Dear Sir:

Re Claim of Chapman & Thompson vs. Java Pacific
Line. [119]

Your letter of yesterday was duly received. The information which you have received to the effect

that the contract was not a contract with Chapman & Thompson is incorrect. The fact is that the contract was made with Chapman & Thompson.

I understand your position to be as follows: That your client assumed that the freight under the contract with Chapman & Thompson would all be shipped by Pacific Coast Steel Company and that your client repudiated the contract because Chapman & Thompson sought to transfer to other shippers certain of their rights under the contract. I understand from you that the assumption that the freight would all be shipped by Pacific Coast Steel Company is based upon statements made in letters from Chapman & Thompson written during the progress of the negotiations leading up to the execution of the contract.

It is doubtless the case that Chapman & Thompson expected that certain of the space covered by the contract would be utilized by Pacific Coast Steel Company; but in my opinion they had the undoubted right to use all or any part of it themselves, or to sell all or any part thereof to whomsoever they pleased. Your client, as I see the case, was interested only in obtaining its compensation for the transportation and it was wholly immaterial to it whether Chapman & Thompson themselves, or the Pacific Coast Steel Company, or any other firm, used the space covered by the contract. If for some reason, which is not apparent, your client had wished to carry only for the Pacific Coast Steel Company, it should, in my opinion, have inserted in the contract a provision re-

stricting the right to ship to Pacific Coast Steel Company.

The position which your client now assumes, it seems to me, amounts in effect to this: That a contract such as the one here involved is non-assignable, or in other words, that it is personal. According to your letter, your client claims that the contract was only nominally with Chapman & Thompson and that the real party in interest is Pacific Coast Steel Company. This claim is wholly unfounded; but let us assume, for the purpose of the argument, that it was founded in fact. Under such assumption the contract would be as much the contract of Pacific Coast Steel Company as if that Company had signed it. Let us assume further that they actually did sign it. If the position of your client is sound the Pacific Coast Steel Company could not assign any rights under the contract.

I have now prepared and have ready for filing a complaint to recover the damages which my clients have sustained by reason of your client's repudiation of this contract. Unless the claim of my clients is satisfactorily compromised without delay this complaint will be filed at 9 A. M. on Friday, the 3d instant. Chapman & Thompson are very desirous of avoiding litigation in this matter, but in justice to themselves cannot longer defer the commencement of an action to enforce their rights.

Very truly yours,

ALFRED J. HARWOOD."

AJH: MS.

(19) The Court erred in overruling plaintiffs'

objection to the introduction in evidence of letter from Nathan H. Frank to Alfred J. Harwood, dated March 2, 1916, as appears in Exception No. 19 in the Bill of Exceptions herein, said objection being made upon the ground that said letter was irrelevant, immaterial and incompetent, written after the breach of contract, and in relation to a compromise or adjustment between the parties. Said letter [120] so admitted in evidence over said objection of plaintiffs, was and is in words and figures following, to wit:

“NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys at Law.

San Francisco, Cal., March 2, 1916.

Alfred J. Harwood, Esq.,

Attorney at Law,

Kohl Building,

San Francisco, Cal.

CHAPMAN & THOMPSON vs. JAVA PACIFIC
LINE.

Dear Sir:

I have to acknowledge your letter of yesterday upon the above subject, and thank you for the frank statement of your position therein contained.

However, I am still of the opinion that your clients have no claim against the Java Pacific Line in the premises, and am only sorry that you do not agree with me in that respect.

While we agree with you in your desire to avoid litigation, I do not feel that I am in a position to ask

you to postpone the commencing of your proposed action, though I sincerely hope that you will give the matter further consideration before doing so.

Very truly,

Yours, &c.,

NATHAN H. FRANK."

(20) The Court erred in overruling the plaintiffs' objection to the following question asked the witness F. F. Connor, as appears in Exception No. 20 in the Bill of Exceptions herein:

"Do you know whether or not the 300 tons of iron mentioned in the correspondence here and which in the letter of March 3, 1915, Defendant's Exhibit "G," is spoken of by the Pacific Coast Steel Company as 400 tons of bar steel booked for their account by Chapman & Thompson was actually received from the Pacific Coast Steel Company and transported in accordance with the terms of this correspondence?"

The said objection was made upon the ground that said question was irrelevant, immaterial and incompetent, as to whether or not some third persons shipped freight with the defendants in this case, and upon the further ground that the question called for the conclusion of the witness whether the shipment of the 300 tons was made in pursuance of a certain contract or not.

(21) The Court erred in overruling the plaintiffs' objection to the following question asked the witness, J. W. Chapman, as appears in Exception No. 21 in the Bill of Exceptions herein:

“As a matter of fact, Mr. Chapman, you personally had no freight at all to ship?” [121]

Said objection was made upon the ground that said question was immaterial, irrelevant and incompetent.

(22) The Court erred in overruling the plaintiffs’ objection to the following questions asked the witness, J. W. Chapman, as appears in Exception No. 22 in the Bill of Exceptions herein:

“Then that of March stood exactly in the same place, in the same situation as the April shipment stands to-day, did it not, at that time?” and

“So far as confirmation is concerned, and so far as any advice from you to the Java-Pacific line is concerned, that it was for the Pacific Coast Steel Company and not for you, I mean?”

Said objection so overruled was made upon the ground that said questions were immaterial, irrelevant and incompetent.

(23) The Court erred in overruling the plaintiffs’ objection to the following question asked the witness, J. W. Chapman, as appears in Exception 23 in the Bill of Exceptions herein:

“Those are the two letters which form the basis of the second item here, March shipment, 1000 weight tons, rate \$10, per ton of 2000 pounds for bar iron under 30 feet in length, plate iron and structural steel, no piece to exceed 4000 pounds in weight, \$12 per ton of 2000 to Hong Kong and Manila, as qualified by the reply which you have put in evidence, in which,

among other things, the Java Pacific Line say, 'We confirm what you have written, except that in the month of March we have on our books reserved for you 300 tons weight for iron bars, plate iron and structural steel.' Is that not so?"

Said objection was made upon the ground that the letter refers to bar iron 20 feet and under in length, whereas the final contract refers to bar iron 30 feet and under in length, and also refers to structural steel which was not mentioned in said letter, and upon the further ground that said question called for conclusion of the witness.

(24) The Court erred in overruling the plaintiff's objection to the following question asked the witness, J. W. Chapman, as appears in Exception No. 24 in the Bill of Exceptions herein:

"At any rate, your statement in your letter of January 27th, concerning the March shipment was based, was it not, upon the agreement contained in the letter of December 24th, which I have exhibited to you?" [122]

Said objection was made upon the ground that said question was immaterial, irrelevant and incompetent, and called for the conclusion of the witness.

(25) The Court erred in overruling the plaintiffs' objection to the following question asked the witness, J. W. Chapman, as appears in Exception No. 25 in the Bill of Exceptions herein:

"You did not consider it necessary; subsequently, however, after this controversy arose, you went down to the Pacific Coast Steel Com-

pany, did you not, to get them to disaffirm your agency for them?"

Said objection was made upon the ground that said question was immaterial, irrelevant and incompetent.

(26) The Court erred in overruling the plaintiffs' objection to the following question asked the witness F. F. Connor, as appears in Exception No. 26 in the Bill of Exceptions herein:

"What was the character of Mr. Edwards' authority in the office there?"

Said objection was made upon the ground that said question called for the conclusion of the witness.

(27) The Court erred in denying the plaintiffs' motion to strike out the following answer given by F. F. Connor to a question asked him, as appears in Exceptions Nos. 26 and 27, in the Bill of Exceptions herein:

"He had no authority whatever. He was an employee."

Said motion so denied was made upon the ground that said answer was the conclusion of the witness.

(28) The Court erred in overruling the plaintiffs' objection to the following question asked the witness F. F. Connor, as appears in Exception No. 28 in the Bill of Exceptions herein:

"You have heard Mr. Chapman's testimony to the effect that Mr. Edwards was in Chapman's office in the Fife Building when Mr. Chapman testified that he told Mr. Edwards that these bookings were for Chapman & Thompson. Did Mr. Edwards ever report that to you?"

Said objection was made upon the ground that said question was immaterial, irrelevant and incompetent. [123]

(29) The Court erred in overruling the plaintiffs' objection to the following question asked the witness F. F. Connor, as appears in Exception No. 29 in the Bill of Exceptions herein:

"Did you ever hear of it before?"

Said objection was made upon the ground that the said question was immaterial, irrelevant and incompetent.

(30) The Court erred in instructing the jury to find a verdict for the defendants as appears in Exception No. 30 in the Bill of Exceptions herein. The Court so erred for the reason that the evidence introduced at the trial of this action tended to support all the material allegations of the complaint.

(31) The jury erred in returning a verdict in favor of defendants in pursuance of said instructions of the Court, as appears in Exception No. 31 in the Bill of Exceptions herein.

(32) The Court erred in entering judgment in favor of the defendants in pursuance of said verdict, as appears in Exception No. 32 in the Bill of Exceptions herein.

(33) The Court erred in overruling plaintiffs' demurrer to that part of defendants' answer contained in the Paragraphs of Subdivision I numbered from 1 to 7 both inclusive. By said demurrer to said part of said answer plaintiffs objected that the matter therein referred to did not constitute a defense to said action.

WHEREFORE said plaintiffs and plaintiffs in error pray that the judgment of said District Court may be reversed and that plaintiffs in error may have judgment against defendants in error for their costs and disbursements here expended.

ALFRED J. HARWOOD,

EUSTACE CULLINAN,

Attorneys for Plaintiffs and Plaintiffs in Error.

[Endorsed]: Filed Dec. 29, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [124]

In the District Court of the United States, in and for the Northern District of California, Division Two.

No. 15,980.

J. W. CHAPMAN and P. R. THOMPSON, Co-partners Doing Business Under the Firm Name of CHAPMAN & THOMPSON,
Plaintiffs,

vs.

JAVA PACIFIC LINE, a Corporation, STOOM-VAARTMAATSCHAPPY, NEDERLAND, a Corporation, ROTTERDAMSCH LLOYD, a Corporation, JAVA-CHINA-JAPAN LYN, a Corporation, BLACK COMPANY, a Corporation, and WHITE COMPANY, a Corporation,

Defendants.

Order Allowing Writ of Error.

Upon motion of the attorney for the plaintiffs in

the above entitled action, and upon the filing of a petition for writ of error and assignment of errors.

IT IS ORDERED that a writ of error as prayed for in said petition be allowed.

Dated December 30th, 1916.

WM. C. VAN FLEET,
United States Circuit Judge.

[Endorsed]: Filed Dec. 30, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [125]

*In the District Court of the United States, in and for
the Northern District of California, Division
Two.*

No. 15,980.

J. W. CHAPMAN and P. R. THOMPSON, Co-
partners Doing Business Under the Firm
Name of CHAPMAN & THOMPSON,
Plaintiffs,

vs.

JAVA PACIFIC LINE, a Corporation, STOOM-
VAARTMAATSCHAPPY, NEDERLAND,
a Corporation, ROTTERDAMSCH LLOYD,
a Corporation, JAVA-CHINA-JAPAN LYN,
a Corporation, BLACK COMPANY, a Corpo-
ration, and WHITE COMPANY, a Corpora-
tion,

Defendants.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, that
whereas, on the 26th day of September, 1916, in the

District Court of the United States, in and for the Northern District of California, Second Division, in a suit pending in said court between J. W. Chapman and P. R. Thompson, copartners doing business under the firm name of Chapman & Thompson, as plaintiffs, and Java Pacific Line, a corporation, Stoomvaartmaatschappij Nederland, a corporation, Rotterdamsche Lloyd, a corporation, Java-China-Japan Lyn, a corporation, Black Company, a corporation, and White Company, a corporation, as defendants, a judgment was rendered against the said plaintiffs and in favor of said defendants, and the said plaintiffs having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit and a citation having issued directed to said defendants, citing and admonishing them to be and appear at the session of the United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco, State of [126] California, in said court, on the 26th day of January, 1917.

NOW, THEREFORE, in consideration of the premises and of such writ of error United States Fidelity and Guaranty Company, a corporation, organized and existing under the laws of the State of Maryland, and having its principal place of business in the City of Baltimore, in said State, and having a paid-up capital and surplus of over three million dollars (\$3,000,000), duly incorporated under the laws of said State of Maryland for the purpose of making and guaranteeing and becoming surety upon bonds or undertakings required or

authorized by law, and which said corporation has complied with all the requirements of the laws of the State of California, regulating the admission and right of said corporation to transact such business in said State, is held and firmly bound unto the above-named defendants, in the full and just sum of five hundred dollars (\$500), lawful money of the United States, to be paid to said defendants, their successors or assigns, for which payment well and truly to be made, the said United States Fidelity & Guaranty Company, a corporation, binds itself by these presents.

The condition of the above obligation is such that if the said plaintiffs in said action, and plaintiffs in error aforesaid, shall prosecute said writ of error to effect and answer all damages and costs that may be awarded against them if they fail to make their said plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the said United States Fidelity & Guaranty Company, a corporation, has caused this obligation to be [127] signed by its duly authorized attorneys in fact and its corporate seal to be hereunto affixed at San Francisco, California, this 30th day of December, 1916.

UNITED STATES FIDELITY & GUAR-
ANTY COMPANY.

[Seal]

By H. V. D. JOHNS,

Attorney in Fact.

By W. S. ALEXANDER,

Attorney in Fact.

State of California,

City and County of San Francisco,—ss.

On this 30th day of December, in the year one thousand nine hundred and 16, before me, W. W. Healey, a Notary Public in and for the City and County of San Francisco, personally appeared H. V. D. Johns and W. S. Alexander, known to me to be the persons whose names are subscribed to the within instrument as the attorneys in fact of United States Fidelity & Guaranty Company, and acknowledged to me that they subscribed the name of the said Company thereto, as principal, and their own names as attorneys in fact.

[Seal]

W. W. HEALEY,

Notary Public in and for the City and County of
San Francisco, State of California.

The above and foregoing bond upon writ of error is hereby approved.

Dated December 30th, 1916.

WM. C. VAN FLEET.

Judge.

[Endorsed]: Filed Dec. 30, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [128]

In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 15,980.

J. W. CHAPMAN et al., etc.,

Plaintiffs,

vs.

JAVA PACIFIC LINE, a Corporation, et al.,
Defendants.

Clerk's Certificate to Record on Writ of Error.

I, Walter B. Maling, Clerk of the United States District Court in and for the Northern District of California, do hereby certify the foregoing one hundred and twenty-eight (128) pages, numbered from 1 to 128, inclusive, to be full, true and correct copies of the Complaint; Petition for Removal; Order of Removal from Superior Court; Answer; Demurrer to Answer; Order Overruling Demurrer to Answer; Verdict; Judgment; Bill of Exceptions; Petition for Writ of Error; Assignment of Errors; Order Allowing Writ of Error and Bond on Writ of Error, filed in the above and therein-entitled cause, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitutes the return to the annexed Writ of Error.

I further certify that the cost of preparing and certifying the transcript of record on writ of error in this cause amounts to the sum of \$88.80; that said sum was paid by the plaintiffs, and that the original

Writ of Error and Citation issued in said cause are hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 2d day of January, A. D. 1917.

[Seal] WALTER B. MALING,
Clerk United States District Court, for the North-
ern District of California.

By J. A. Schaertzer,
Deputy Clerk.

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

United States of America,
Ninth Judicial Circuit,—ss.

Writ of Error.

The President of the United States of America, to
the Honorable, the Judge of the District Court
of the United States, for the Northern District
of California, Second Division, Greeting:

Because, in the record and proceedings, as also in
the rendition of the judgment of a plea, which is in
the said District Court, before you, at the July, 1916,
term thereof, wherein J. W. Chapman and P. R.
Thompson, copartners doing business under the firm
name of Chapman & Thompson are plaintiffs in
error, and Java Pacific Line, a corporation, Stoom-
vaartmaatschappij Nederland, a corporation, Rotter-
damsche Lloyd, a corporation, Java-China-Japan
Lyn, a corporation, Black Company, a corporation,

and White Company, a corporation, are defendants in error and wherein said J. W. Chapman and P. R. Thompson, copartners doing business under the firm name of Chapman & Thompson, were plaintiffs, and said Java Pacific Line, a corporation, Stoomvaartmaatschappij Nederland, a corporation, Rotterdamsche Lloyd, a corporation, Java-China-Japan Lyn, a corporation, Black Company, a corporation, and White Company, a corporation, were defendants, a manifest error has happened, to the great damage of the said J. W. Chapman and P. R. Thompson, copartners doing business under the firm name of Chapman & Thompson, the plaintiffs in error, as by their complaint appears :

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals, for the Ninth Circuit, together with this writ, so that you have the same at the city and county of San Francisco, in the State of California, where said court is sitting, on the 26th day of January, 1917, and within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and

according to the laws and customs of the United States, should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the United States, the 30th day of December, A. D. 1916.

[Seal] WALTER B. MALING,
Clerk of the District Court of the United States for
the Northern District of California, Second
Division.

By J. A. Schaertzer,
Deputy Clerk.

Allowed by

WM. C. VAN FLEET,
United States District Judge.

Service and receipt of a copy of the foregoing Writ of Error this 30th day of December, 1916, is hereby admitted.

NATHAN H. FRANK,
IRVING H. FRANK,
Attorneys for Defendants and Defendants in Error.

[Endorsed]: No. 15,980. In the United States Circuit Court of Appeals, for the Ninth Circuit. United States of America, Ninth Judicial Circuit,—ss. Writ of Error. Filed Jan. 2, 1917. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.

The answer of the Judges of the District Court of the United States, in and for the Northern District of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our

said court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned at the day and place within contained, in a certain schedule to this writ attached as within we are commanded.

By the Court.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk.

*In the District Court of the United States, in and for
the Northern District of California, Division
Two.*

No. 15,980.

J. W. CHAPMAN and P. R. THOMPSON, Co-
partners Doing Business Under the Firm
Name of CHAPMAN & THOMPSON,
Plaintiffs,

vs.

JAVA PACIFIC LINE, a Corporation, STOOM-
VAARTMAATSCHAPPY NEDERLAND,
a Corporation, ROTTERDAMSCH E
LLOYD, a Corporation, JAVA-CHINA-
JAPAN LYN, a Corporation, BLACK COM-
PANY, a Corporation, and WHITE COM-
PANY, a Corporation,

Defendants.

Citation on Writ of Error.

United States of America,
Northern District of California,—ss.

The President of the United States, to Java Pacific Line, a Corporation, Stoomvaartmaatschappij Nederland, a Corporation, Rotterdamsche Lloyd, a Corporation, Java-China-Japan Lyn, a Corporation, Black Company, a Corporation, and White Company, a Corporation, GREET-
ING:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the 26th day of January, 1917, being within thirty (30) days from the date hereof, pursuant to a Writ of Error filed in the clerk's office of the District Court of the United States, for the Northern District of California, Second Division, wherein J. W. Chapman and P. R. Thompson, copartners doing business under the firm name of Chapman & Thompson, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said J. W. Chapman and P. R. Thompson, copartners doing business under the firm name of Chapman & Thompson, plaintiffs in error, as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable WILLIAM C. VAN FLEET, Judge of the District Court of the United

States, in and for the Northern District of California, this 30th day of December, A. D. 1916.

WM. C. VAN FLEET,

Judge.

Service and receipt of copy of foregoing Citation or Writ of Error this 30th day of December, 1916, is hereby admitted.

NATHAN H. FRANK,

IRVING H. FRANK,

Attorneys for Defendants and Defendants in Error.

[Endorsed]: No. 15,980. In the District Court of the United States, in and for the Northern District of California, Division Two. J. W. Chapman et al., Plaintiffs, vs. Java Pacific Line, a Corporation, et al. Defendants. Citation on Writ of Error. Filed Jan. 2, 1917. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No 2911. United States Circuit Court of Appeals for the Ninth Circuit. J. W. Chapman and P. R. Thompson, Copartners Doing Business Under the Firm Name of Chapman & Thompson, Plaintiffs in Error, vs. Java Pacific Line, a Corporation, Stoomvaartmaatschappij Nederland, a Corporation, Rotterdamsche Lloyd, a Corporation, Java-China-Japan Lyn, a Corporation, Black Company, a Corporation and White Company, a Corporation, Defendants in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the

198 *J. W. Chapman and P. R. Thompson*

United States District Court of the Northern District of California, Second Division.

Filed January 4, 1917.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals,
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.